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THE NATION

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Nixon and the Constitution
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Stephen Gillers

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Rising Waters in Luzon
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MICHAEL KENNEDY
Sociology—Orthodoxy or *Aggiornamento*?

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LETTERS

collision on Amtrak

Washington, D. C.

DEAR SIRS: Ordinarily I do not comment on articles written by those who take liberties with facts and twist them to back up their own viewpoints. But since Richard Hébert took the liberty to write about a subject he knows nothing about ["Amtrak: Asleep at the Switch," *The Nation*, Aug. 21], then draw completely false conclusions about me and my professional integrity, I have to draw the line. . . .

His use of such cover-all phrases as "most indicators"—without his naming one—his conclusion that Amtrak will drop "thirty or forty trains" without any backup facts whatsoever, are reasons enough for the intelligent reader to discredit the writer.

However, when he tries to discredit Amtrak by assaulting people (whom he has never met) who are honestly committed to making Amtrak work, I am appalled at your editorial judgment. You did not even take the time to check, for instance, that two of the officials he tried to discredit have not worked for Amtrak for more than six months! . . .

As for myself, I challenge Mr. Hébert to prove his sweeping statement that because of my earlier railroad trade association experience, I have a completely negative attitude toward the value of a national passenger service. . . . I not only believe Amtrak will work but I have put my career on the line to prove it.

Edwin E. Edel
Vice President, Public Affairs, Amtrak

Washington, D. C.

DEAR SIRS: Mr. Edel seems to feel that "most indicators" is an ambiguous term, meant only to cloud my sources for reporting that Amtrak is on the road toward dropping much of its national railroad service next year, when in fact those sources are mostly published remarks by Amtrak officials themselves. Amtrak President Roger Lewis is on record numerous times as foreseeing the day in the near future when the system will have to drop its nonprofitable lines, of which Amtrak has many. Several members of the U.S. Senate have voiced concern about this.

Whether or not the background of many Amtrak officials permits them to be "honestly committed to making Amtrak work" may be a debatable point. In any event, it is probably unprovable at this stage of Amtrak's life. Mr. Edel's point about the two officials no longer employed, however, is well taken. I apologize for the error. The article listed Elmer E. Jones, formerly of National Airlines, as Amtrak director of Congressional affairs; he has, in fact, been replaced by William Tinney, formerly a Penn Central lobbyist. . . . The second official no longer at Amtrak is Operations Vice President Harold Wanaselja, formerly of the New Haven Railroad, who also has been replaced by a former Penn Central man, that financially troubled line's former Vice President for Operations F. S. (Pat) King. . . .

Richard Hébert

flush

Los Angeles, Calif.

DEAR SIRS: And to think that all these years I so strongly underestimated the perceptive talents of Joseph Alsop. In his column of August 24 he noted that Richard Nixon may not be loved, but he will be re-elected. Why, you ask? Because, confides Alsop, the voter will select Nixon "the way any sensible man chooses a plumbing fixture." There you have it. On Election Day, John Q. Public enters the polling booth, draws the curtain shut, pulls the lever, and the country goes down the drain.

Harry Cimring

EDITORIALS

The Olympic Peace

It is generally understood that when the Olympic Games were first instituted, while they were being held quarrels were laid aside, and throughout Greece all strife ceased. Even ongoing warfare was subject to intermission for the duration of the Games, a period known as the Olympic Peace. And it was the intent of the Baron de Coubertin, when he revived the Games in 1896, that they would provide a periodic interlude of concord and friendship among men and nations. This was their primary purpose.

Over the years—more particularly since 1936 when Hitler did his utmost to utilize them for chauvinistic purposes—the Games have served more and more as vehicles for nationalistic rivalries. This trend was of course accelerated by the cold-war mentality, which focused on the keeping of national score sheets by the United States and the USSR as the respective champions of the opposing sides. Each quadrennium found the ideal of the Olympic Peace pushed further back on the shelf.

And now it lies in ruins, following the barbaric kidnapping and murder of eleven Israeli athletes by a terrorist group calling itself "Black September." No more outrageously inappropriate time, place, or circumstance could have been conceived for such an act of violence. If it was their purpose to achieve maximum public attention they can be said to have succeeded. But by any other measure they failed, and in fact have drawn worldwide revulsion for the cause they purported to represent. Many of those who might have been expected to sympathize with their purposes have condemned their actions. Mohammed Khatib, director of the Arab League Bureau in Germany, rushed to Munich to express regrets: "The Arab League deplores the act of violence which has broken the Olympic Peace. . . . Arabs reject such acts, and cannot be identified with them." Even the massacre at Lod Airport failed to elicit words like these, which one trusts to have been sincere. So there is some small hope that the loss of eleven young Israeli lives may not have been, in the end, entirely fruitless.

Much will depend upon the reaction of Israel. The policy of never yielding to threats of violence is certainly understandable, and probably right. An Egyptian spokesman, while condemning the murders, has stated his opinion that "negotiation might have helped," and that "arrogance in refusing" led to the tragedy. This is doubtful; what possible use would there be in trying to negotiate with such sick minds? In this case Israel was justified in declining to bargain, since the hostages were almost certainly doomed in any event. The criminals' refusal to accept the remarkable offer of four German officials to substitute themselves as hostages would indicate that their aim was bloodletting, not bargaining.

Machismo can be carried too far, however, and it would be deplorable if the Israeli Army were to use this tragedy as a pretext for punitive raids against neighboring states. Violence begets violence; blows of revenge go astray and it is always the innocent who suffer. As it was in this case.

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But this time, for the first time, we are hearing nearly unanimous voices of condemnation and revulsion from both sides. If the words are in harmony, may not the minds be also? It is a time for dialogue, for almost all are in agreement on this horrible affair. If in that spirit the area of agreement will be increased by so much as a hair's breadth, "the desert shall rejoice."

As for the Olympic Games, their essence is peaceful, friendly, individual competition between the athletes of the world. They must, in the future, be resumed in that spirit, or else they should not be resumed at all.

The Public's Right to Know

The Watergate affair is really a double scandal, one part dealing with the Republicans' compliance or non-compliance with the regulations governing campaign receipts and expenditures, the other with political espionage. The two are not equal. The first is serious enough, but not nearly as serious as the second. Sen. Robert Dole, the Republicans' chief loud-mouth, has tried to minimize the damage to the Nixon campaign with a blatant "you too" tactic—he maintains that if Republicans have violated the law that went into effect on April 7, so have the Democrats. Even if he could make that accusation stick, the more serious aspect of the case would remain to be explained. Dole, whose effrontery is excelled by none, has not accused the Democrats of political espionage. He would if he could, but he can't.

With all the Republican obfuscation that has been introduced, it may be worth while to review the facts on which there is general agreement, and also some allegations subject to verification or refutation. On the night of June 17 five intruders were arrested at gunpoint in the Democratic National Headquarters suite in the Watergate apartment-office complex. Seized with them were equipment for photographing documents, bugging apparatus, radio communications receivers, etc. Their alleged leader was Bernard L. Barker, a former employee of the Central Intelligence Agency and connected, like the others, with the Bay of Pigs operation foisted on President Kennedy soon after he took office. Barker is, among other things, a Miami real estate broker. On the basis of their records —one of them styles himself a "soldier of fortune"— and the equipment they were carrying, the arrested men would rate as professionals in the art of obtaining information surreptitiously.

Whether a crime was committed is to be determined by a grand jury at present investigating the case. However, a civil suit brought by Lawrence F. O'Brien, then chairman of the Democratic National Committee, is already in an early stage of deposition taking and legal maneuvering before Federal District Judge Charles R. Richey in Washington. The judge has the somewhat delicate task of not permitting the testimony in the civil suit from prejudicing the rights of the prospective defendants in a criminal action.

Besides the five who were arrested in the Watergate premises, two former White House aides, G. Gordon Liddy and E. Howard Hunt, Jr. figure in the case. Liddy was general counsel to the Finance Committee to Re-elect the President at the time of the Watergate raid. When the

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SEP 18 '72

FBI got into the case and Liddy refused to talk, Mitchell fired him. Hunt disappeared for awhile, then showed up again. In the midst of these goings-on, John Mitchell resigned as Nixon's campaign manager, giving as his reason the demand of his redoubtable wife, Martha, that he leave the "dirty business" of politics.

Part of the mystery involves money, as mysteries of this type usually do. A little matter of $114,000 in campaign contributions was sent to Washington in the form of five checks, subsequently deposited in a bank account controlled by Barker, who withdrew the money in cash in late April and early May. When he was picked up on June 17 Barker was carrying some $5,000 which has been traced to the withdrawals. It has also been established that Maurice H. Stans, the former Secretary of Commerce who is now Nixon's chief money man, had $350,000 stashed away in a safe in his office for a time, but this Nixon nest egg was finally put in a bank late in May and has not been connected with Barker, et al. According to the General Accounting Office, Stans "has stated his belief that any records which may have existed with respect to the $350,000 were destroyed. . . ." He sounds a little like Dita Beard. There are also indications that the Democratic headquarters were broken into *before* June 17, and reports have circulated that Messrs. Liddy and Hunt were in the vicinity of the Watergate at the time of the June 17th raid. It is known that these two conferred several times with Barker in Miami, and so on.

The public is entitled to know, well before November 7, what actually went on. The chief investigator is Atty. Gen. Richard Kleindienst, a Republican appointed by Nixon. Kleindienst may have the best intentions in the world, but if Mr. Nixon would appoint an impartial commissioner to go into the case, many minds would be easier.

This is a very serious matter. In a column titled "The Watergate Whitewash" (*New York Post*, September 2) Clayton Fritchey compares Watergate with the Teapot Dome scandal of President Harding's term. "Not in 50 years," Fritchey writes, "has an incident so serious raised questions about an Administration's undercover relations with its financial angels." But the political-spy aspect is even more serious than where the hot money came from and where it went. Thomas J. Walsh, the crusading Senator from Montana, broke the Teapot Dome case, got Harding's Secretary of the Interior sentenced to a year in prison, and informed the public what had gone on. Since Harding's Attorney General was one of the conspirators, only an outside prosecutor could have shown that Harding's administration was corrupt all the way down the line.

What went on at Watergate may not be that dirty, and the President may be pure as the driven snow, but the voters are entitled to the facts, and soon.

Who Judges the Judges?

A recent story by Jack Newfield in *The Village Voice* throws a pertinent and unpleasant light on a neglected aspect of the highly profitable traffic in hard drugs in the New York area. A heroin dealer appeared on August 8 before Justice Dominic Rinaldi of the Brooklyn Supreme Court. The dealer was charged with selling heroin and bribing a policeman; he had offered the arresting officer $1,000 and the offer had been tape-recorded. It was the eighteenth arrest for the defendant. A 5-page arrest report showed convictions for selling heroin, check forgery and assault. Yet the defendant was released without bail. If this were an isolated instance of its kind it might be attributed to judicial whim or misjudgment. But on June 12 of this year, at a public hearing of the Joint Legislative Committee on Crime, Rinaldi was one of four city judges named publicly as being strangely lenient in felony narcotics cases. Strict law enforcement may not be the best way to halt the traffic in hard drugs, but the lenient handling of cases involving drug pushers certainly does not discourage it. And a still more serious issue is involved: who judges the judges in such cases?

Punishment by Harassment

The renewed harassment of the Unitarian Universalist Association and its publishing arm, The Beacon Press, by the Justice Department and the FBI is petty, vindictive and dangerous. Beacon Press published a four-volume edition of *The Pentagon Papers* after Sen. Mike Gravel had made them part of the public record before a subcommittee he chaired, and released copies to the press. Through a federal grand jury in Boston, the Justice Department demanded and received copies of bank records of both organizations for the period from June 1 to October 1. The bank complied with the subpoena but did not report the fact to its depositors until some time later. The grand jury proceedings were then delayed, pending disposition of Senator Gravel's appeal to the Supreme Court, but are now being resumed. The investigation may have been launched as a fishing expedition but the facts are now well known and have been widely publicized. It is not facts or information that the government now seeks; the purpose of the renewed investigation is to punish organizations that published material in the public domain which the government tried its best to suppress. The renewed investigation is pure harassment with minatory overtones. Seizing the lists of contributors to a church is an extraordinarily high-handed procedure even for this Administration. Since it is difficult to halt the misuse of grand jury powers by court action, pressure of public opinion is needed to call a halt to this crude police racket.

Fattening Profits

Diethylstilbestrol (DES), Nicholas Wade wrote in *Science* (July 28), is a "chemical of bizarre and far-reaching properties, chief of which is that it is a spectacularly dangerous carcinogen." After seventeen years of disgraceful foot dragging by the Department of Agriculture and the Food and Drug Administration, the latter finally imposed a partial ban on the use of the hormone in animal feeds. The ban is not effective until January 1, 1973 and affects only premixed forms of DES used in cattle and sheep feeds. Implanted pellets are still legal.

DES may pose some risk to meat consumers, but farmers favor it because an animal dosed with DES will

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reach market weight of 1,000 pounds thirty-five days sooner and require 500 pounds less feed than a comparable animal raised without it. The reason FDA finally gave ground on the DES issue is that the Delaney anti-cancer law of 1958 says categorically that no known carcinogen shall be allowed in food, and with improvements in detection methods the presence of residues of DES in meat could no longer be denied. Sen. Edward Kennedy's health subcommittee publicized the situation, and Harrison Welford, of Ralph Nader's Center for the Study of Responsive Law, concluded that "neither the USDA nor the FDA could make a serious estimate of how much DES was getting into the nation's beef." Also, of course, Sen. William Proxmire has been active in this situation for some time. It is beginning to look as if the bureaucracies cannot be spurred into action unless Kennedy or Nader gets on their tails.

Why all the procrastination after the case against DES was no longer in doubt? Some observers point out that the Nixon Administration has been concerned about the rising price of beef in an election year, and if DES is totally banned (as by all indications it will be after January 1), the price per pound to the consumer will rise by 3.5¢. Of course the price probably will go up anyway, for it seems to be an immutable law that when costs go up, prices to the consumer go up, and if costs go down, prices go up nevertheless. Profits and politics go hand in hand, according to the custom of the present Administration.

Good Use for the U.N.

A largely neglected function for the U.N. is to hold the mirror up to member states, particularly the great powers, and to say in effect this is the way the U.N. sees you. Which more often than not will differ sharply from the way the member state sees itself.

A current case is the action to put Puerto Rico under study as a colonial territory entitled to independence, by vote of the U.N. Committee on Colonialism. This committee was established in 1961, after the Western powers had granted independence to their Asian and African colonies, but with some exceptions, e.g., Portugal and its still substantial holdings abroad. The committee's mission was to hasten the elimination of such residual colonialism. This offered an opportunity for Communist and Third World members to needle capitalist members on occasion, and in January 1971 the United States, followed by Great Britain, pulled out of the committee. These allies complained of unfair treatment, propaganda, etc. One grievance was Cuba's persistent efforts to have Puerto Rico classified as an American dependency, a victim of "imperialist colonialism."

Cuban Ambassador Ricardo Alarcon tried to bring this accusation before the 132-member General Assembly and got nowhere. The small anti-colonialism committee, however, welcomes such issues. Without them it would have nothing to do—which does not mean that stirring up such matters is useless. The United States, of course, waxes indignant at the charge that Puerto Rico is a colony and, together with the U.S.-Puerto Rican administration, points to the 1967 plebiscite in which 425,000 voters were in favor of retaining the island's commonwealth status, another 233,000 wanted statehood, and only 4,200 voted for independence. (The almost negligible vote for independence is explained by the *independentista* leaders as the result of their appeal to voters to boycott the election, which they charged was "rigged.")

Just the same the relationship between the United States and Puerto Rico *is* anomalous and there is not the slightest chance that the agitation will abate. The way the U.N. committee looks at it, the island is a colony, although under a benign dispensation. By a 12-to-0 vote, with ten nations abstaining, the committee adopted a "compromise" resolution asserting the "inalienable right of the people of Puerto Rico to self-determination and independence" and set up a working group to decide how to apply the provisions of the U.N. "Declaration Against Colonialism" to the afflicted island. Voting in favor were China, the Soviet Union, Yugoslavia, Bulgaria, Czechoslovakia, Ecuador, India, Iraq, Mali, Sierra Leone, Syria and Tanzania. Cuba, however, is not a member of the committee.

The compromise fell short of classifying Puerto Rico as a colony, an action which would require the United States to submit annual reports on its trusteeship to the U.N. Nevertheless Washington reacted strongly, declaring the committee decision "an insult to the people of Puerto Rico who have chosen to live in a democracy under a constitution of their own choosing in free association with the United States." That is stretching it a bit, since the free association gives the island only a resident commissioner, without vote, in the U.S. House of Representatives, and no representation at all in the Senate. Taking it all in all, the action of the U.N. committee is likely to work to the advantage of the Puerto Ricans, and it will surely do no harm to the United States to hear other nations' views on the issue.

Quiet Philanthropy

No publication these days can pretend to status unless it comes into possession of "leaked documents," thrust under the door of its premises in the dark of night. A document has been leaked to *The Nation* and no degree of coercion will induce us to betray its source. Its contents are as follows:

On August 9, and *privately*, United Parcel Service made a grant of $1,000 to the National Farm Workers Service Center, Inc. (P.O. Box 48, Kenne, Calif., for the benefit of other shy philanthropists); it is the first of an intended series of four annual payments to help defray the cost of training a doctor of medicine to serve the center on a full-time basis. The letter of transmittal that was leaked to us is signed by Charles W. L. Foreman, vice president. It says: "United Parcel Service prefers to avoid publicity. You may reveal the source of these funds on a restricted basis, however, if you feel that doing so will help the Center and its medical program."

This is another example of modest philanthropy by a corporation that feels a sense of social responsibility is not incompatible with good service and gratifying profits. We believe that "revealing the source" will help the Center, and we think the less restricted the better.

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THE JUSTICE & THE JOURNALIST

VINCE BLASI
Mr. Blasi, who is a professor at the University of Michigan Law School, has been director of the Field Foundation Study on Press Subpoenas.

"The issue in these cases is whether requiring newsmen to appear and testify before state or federal grand juries abridges the freedom of speech and press guaranteed by the First Amendment. We hold that it does not." So begins Mr. Justice White's opinion for a five-man Supreme Court majority in *United States* v. *Caldwell, Branzburg* v. *Hayes,* and *In re Pappas.* The decisions in the three cases, consolidated in one comprehensive and quite scholarly opinion, could have the unfortunate effect of retarding what is probably the most important journalistic development of recent times—the trend toward a more thoughtful, interpretive style of reporting. Such news coverage often requires the reporter to establish a relationship of mutual trust with many different news sources, particularly rank-and-file participants in a movement or an event who are inexperienced and ill at ease in dealing with the press. When the newsman's autonomy is compromised by the possibility that he might be subpoenaed, an element of self-consciousness and caution can intrude into the relationship and this may foreclose the possibility of truly perceptive reporting.

However, the ultimate result of the Court's action remains highly uncertain. Much will depend on the responses of the lower courts, the legislatures and even the journalism profession itself. In this last respect, the press has already stumbled once by responding to the decisions with an orgy of self-pity and an apocalyptic account of the Court's holding that can only exacerbate the apprehensions of news sources.

What the Court actually held is a question that lawyers and law professors will debate for years. The uncertainty stems from the fact that Mr. Justice Powell, who formally subscribed to the majority opinion, filed a separate opinion that purports to clarify the Court's decision, but which in fact seems to adumbrate a constitutional standard that is significantly more protective of the press than that set out by Mr. Justice White. Since Powell's vote was pivotal in the disposition of the cases, his understanding of the majority's holding actually constitutes the governing standard for future press-subpoena disputes.

Even when read in isolation, Mr. Justice White's majority opinion is not entirely free of ambiguity. It begins by recognizing that the First Amendment provides "some protection for seeking out the news," as well as for publishing information already in hand, and concludes by admonishing that "grand juries must operate within the limits of the First Amendment as well as the Fifth." Yet at several points the opinion seems to equate the newsman's obligation to testify with that of the everyday citizen. Moreover, the only protection that Mr. Justice White specifies is the right to be free from subpoenas that are sought in bad faith for purposes of harassment, but that is a safeguard that all witnesses already enjoy, quite apart from the First Amendment. On balance, it would seem that the White opinion invites conflicting interpretations but is most plausibly to be read as giving news gatherers no quantum of protection against subpoenas beyond that which is possessed by all prospective witnesses.

The Powell opinion has quite a different thrust. It first declares that newsmen have a constitutional privilege to resist subpoenas issued in bad faith or bearing only a "remote and tenuous relationship to the subject of the investigation." The opinion then goes on to provide that "[t]he asserted claim to privilege should be judged on its facts by the striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct. The balance of these vital constitutional and societal interests on a case-by-case basis accords with the tried and traditional way of adjudicating such questions."

Such an approach demands a careful inquiry into the facts of each case. In voting to reject the privilege claims in the three cases before him, Mr. Justice Powell might be thought to have failed to apply the detailed balancing standard that he declares to be appropriate. But the key to understanding his position is contained in a footnote in which he explains that the balancing he advocates can be applied only after the subpoena dispute has progressed to the point where specific questions have been asked and their place in the larger context of the investigation can be discerned. Since Caldwell, Branzburg and Pappas had each asserted his privilege at a threshold stage before the grand jury had framed specific questions, under Powell's analysis their constitutional contentions were premature and had to be rejected for that reason. The Powell opinion, which it must be stressed again is the controlling opinion, leaves open the possibility that newsmen in positions such as Caldwell, Branzburg and Pappas found themselves might yet be privileged to keep important source confidences intact if they cooperated with grand jury probes up to a point.

That is a good deal more protection than the news reports about the decisions have indicated. Indeed, lower court judges who appreciate the need for a newsman's privilege should feel little constrained by the precedents set in these cases. Nevertheless, the current situation is most unsatisfactory. The question of privilege is so dependent on the factual nuances of each case and on the reactions of the judges that a climate of caution is almost certain to envelop many reporter-source relationships. Such a development will not hinder the uncritical, sensationalist brand of news coverage; it is the in-depth, perceptive reporting that will suffer. What the Court majority, including even Mr. Justice Powell, appears not to appreciate is the stake that all news consumers—not least of all law-enforcement officials—have in the recent trend toward a much more critical, more probing style of journalism.

The struggle for a comprehensive newsman's privilege will now shift to the legislative arena. Eighteen states have already passed privilege statutes and the highly

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respected Commissioners on Uniform State Laws are working on a model law to protect newsmen. Several bills already introduced in Congress would immunize reporters from subpoenas issued by federal courts and grand juries. If it so chooses, Congress probably also has the power to prohibit state courts and investigative bodies from subpoenaing newsmen. Mr. Justice White's opinion not only leaves the door open for a broad statutory privilege but at times seems to go so far as to recommend such legislation.

Ultimately, the Court's action is unlikely to reverse the trend toward quality reporting. *Caldwell, Branzburg* and *Pappas* are probably most significant for what they indicate about the judicial philosophies of the Nixon appointees. For those who had hoped that "strict constructionist" meant "faithful to the intentions of the framers of the Constitution," rather than merely "politically conservative," the decisions are a cause for much alarm. Because, as Justice Stewart noted in his forceful dissent, "[t]he Court's crabbed view of the First Amendment reflects a disturbing insensitivity to the critical role of an independent press in our society. The question whether a reporter has a constitutional right to a confidential relationship with his source is of first impression here, but the principles which should guide our decision are as basic as any to be found in the Constitution." □

NIXON AND THE CONSTITUTION

PUTTING THE LAW IN ITS PLACE

STEPHEN GILLERS
Mr. Gillers, a lawyer, is director of the Committee for Public Justice. He is the author of Getting Justice: The Rights of People *(Basic Books) and editor, with Pat Watters, of* Investigating the FBI, *which Doubleday will publish this winter. The Committee for Public Justice was formed in December 1970 as an early warning system against infringements of the civil liberties and civil rights of Americans. Its membership includes more than 100 prominent citizens and it has been active in the areas of privacy, government and the press, prisoners' rights, the FBI, government secrecy, abuses of the grand jury system and rural poverty.*

Like God and morality, the Constitution means different things to different people. Its authority is often invoked for opposing positions: for and against gun control, for and against electronic surveillance, for and against school bussing. An advocate, having labeled an opponent's position unjust, immoral or sacrilegious, will somehow invoke an extra measure of infamy if he calls it unconstitutional as well.

In a nation with a tradition of appealing to moral imperatives, the idea of a Constitution is invaluable, perhaps inevitable. If we did not have it, we'd likely invent it. It is our religion, history and highest law rolled into one impressive document. And it is always right. No matter that an ephemeral Supreme Court may interpret its provisions against one's strongest beliefs; the Constitution is right still, its truth obscured by an incorrect interpretation.

The Constitution does, however, enjoy a consensus in certain areas. Foremost among these is the promise that there are certain actions governments cannot take, certain rights citizens cannot lose, and certain rules that will not be broken or compromised. The Constitution is our assurance that, behind the politics, the bureaucratic tangles and the unfairness of day-to-day government, a supreme law of the land operates in favor of the dignity and integrity of the individual, even if it makes things a little harder for governments.

This foremost promise is somewhat of a fiction.

The Constitution cannot enforce itself. It does not have a treasury or an army or access to the media. Governments have these things, however, and in particular the President has them. In fact, the President has the greatest power to translate constitutional rights into everyday realities—or to impede that goal.

That is both a necessary and an unfortunate fact of political life. It is necessary because the Presidency is an office of great power and power cannot easily be compartmentalized. But the power a President has to run the country can also be used purposely or carelessly to weaken constitutional rights. Unfortunately, some Presidents often, and perhaps all Presidents sometimes, do proceed as though the Bill of Rights and other constitutional guarantees were not there.

We should not be surprised. The President may be President of all the people, but a majority or large plurality elects him. The Constitution has an additional constituency: the minorities of the people. Its provisions protect those suspected of crime, those with unpopular political views, racial and religious minorities, the poor, the socially unacceptable and others whose beliefs or life styles may momentarily distinguish them from most Americans. These people do not elect Presidents.

The goal, therefore, is to elect Presidents who are sensitive to such matters to begin with and who will consider issues involving constitutional rights without undue attention to political expediency. Citizens concerned with constitutional freedoms should ask Presidents and Presidential candidates if they will use their power to advance or to frustrate these guarantees. This question is particularly important now, for several reasons. First, with a Presidential election upon us, it is an issue that voters must consider. Second, attention to constitutional rights is more pressing in a technological age, when freedom and privacy are in certain respects much harder to come by. And third, there have been persistent charges that the current Administration, more than any before it, is threatening the constitutional rights and liberties of Americans.

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Mary McCarthy, for example, wrote in *Newsweek* that "subversion, by word and deed, of the Constitution, in particular those sections . . . dealing with the rights of defendants and those having to do with freedom of speech and of assembly, has been a persistent thread running through the Administration." In *The New York Times*, Harvard law Prof. Alan M. Dershowitz talked of the feelings "by lawyers and civil libertarians that the Bill of Rights is in greater danger today than it has been in recent decades." In the *Los Angeles Times*, D.J.R. Bruckner said that, though the current Administration "did not begin the campaign to destroy the effectiveness" of the Bill of Rights, "it has had more success than any Administration in many decades in weakening them." In his introduction to the recently published *The Rights of Americans*, constitutional law Prof. Norman Dorsen calls the mood of government "repressive" and suggests that it reflects "open or covert government policy." And Richard Harris ends a long *New Yorker* article, in which he cites the fear of crime as the new excuse to curtail rights, with the statement: "No one can say that the President has willfully set out to undermine the Constitution that he swore to uphold. But how would the results be different if he had?"

What is the evidence? How can we measure, at close range, an administration's commitment to freedom? Each day a President and the many people he puts in power—some for life, others for the duration of his administration—make decisions that directly or indirectly affect constitutional rights. Many of these are unreviewable; many are undiscoverable until long after they are made. Some violate basic rights; others do not amount to a legally recognized wrong but do frustrate the spirit and underlying values of the Constitution.

I have examined certain of the more visible—and I believe representative—decisions of the Nixon Administration and reach three conclusions: First, the President has nominated or tried to nominate to the Supreme Court and the Justice Department lawyers not likely to be protective of important constitutional freedoms; in the case of the Court, he has gone out of his way to recommend lawyers of middling abilities, thereby reducing public respect for the institution. Second, the Administration has acted to weaken underlying values and the delicate balance of constitutional government. Two examples discussed here are the orchestrated effort to damage full and free public debate by attacking carefully selected press outlets and the exaggeration of national security dangers to win a Supreme Court case that would severely compromise freedom from electronic surveillance. Finally, the President has taken advantage of and sought to limit still further the already limited ability of the courts to control his conduct.

These conclusions suggest that during the last three and a half years the interest of Americans in the preservation of their constitutional freedoms has been consciously subordinated to the interests of the President.

The President has the power to nominate the ten officials whose views of the Constitution, together with his own, are most likely to determine what the rest of us—in government or out—may urge or reject in theory. The ten others are the Attorney General and the nine Justices of the Supreme Court. True, all these must be confirmed by the Senate and, as we have seen recently, confirmation may no longer be automatic. Also, power to nominate nine Supreme Court Justices does not mean there will be nine opportunities. Still, Richard Nixon has in less than three years selected four Justices, including the Chief Justice, and has made of the Court, once weighted in favor of individual rights, a seesaw, with Byron White, formerly on the conservative end, now at the fulcrum.

With whom has Mr. Nixon chosen to share the job of implementing and protecting constitutional rights? His first Attorney General, John Mitchell, was a municipal bond specialist who had no particular experience with or sensitivity to issues of civil rights and civil liberties. His major qualification for the job seemed to be successful management of the President's campaign, a danger signal that the Justice Department would be as responsive to politics as to justice. Under Mitchell and Richard Kleindienst, his subordinate and successor, the department took the following positions:

¶It claimed that the Executive has inherent power to bypass the Fourth Amendment and use electronic surveillance without court authorization in domestic security cases. And, until the Supreme Court unanimously rejected this claim, it did just that.

¶It opposed effective extension of the 1965 Voting Rights Act and reduced its enforcement of that law.

¶It relied on conspiracy issues in cases with First Amendment implications, without apparent concern for the effect on the constitutional guarantee of freedom of association.

¶It used grand jury subpoena power to undermine—as in the cases of *New York Times* reporter Earl Caldwell, Beacon Press, and Senate aide Leonard Rodberg—freedom of the press and the separation of powers doctrine.

¶It substantially increased the use of grand juries as an information-gathering and intimidation device, again ignoring the effect on constitutional freedoms. (See Donner & Cerruti: "The Grand Jury Network," *The Nation,* January 3.)

¶It approved and defended the illegal methods used to arrest 13,000 persons during the 1971 Mayday demonstrations in Washington, D.C., without regard to the right to assemble and petition the government.

¶It sought to revive and expand the powers of the Subversive Activities Control Board, described recently by Senators Ervin and Proxmire as "an anomaly and an unnecessary appendage to our government. It is a distasteful relic of the McCarthy era, incapable of performing any significant constitutional function."

¶It secured the passage of the D.C. Crime Bill which contains, among other things, "no-knock" and preventive detention provisions and a section that enables the government to force landlords, building custodians and the telephone company to assist in the wiretapping and bugging of private citizens. It has urged passage of a similar law nationally.

¶It indulged Southern school districts with extensions of time within which to comply with school desegregation orders, and it proposed legislation which, it says, would undo the civil rights work of two decades by permitting

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the reopening of every school desegregation ruling in the nation.

Mr. Nixon apparently agrees with these actions of his Justice Department. He has never said otherwise. Indeed, he has expressed his concurrence by making Mr. Mitchell his first choice for 1972 campaign manager, Mr. Kleindienst his new Attorney General, and Asst. Atty. Gen. William Rehnquist a Supreme Court Justice.

The persons Mr. Nixon has nominated or considered nominating to the Court should terrify a civil libertarian. In addition to those the Senate confirmed, the President proposed Judges Haynsworth and Carswell and was about to nominate Hershel Friday and the much reversed Judge Mildred Lillie when the American Bar Association vetoed them—though Friday was a former member of its Board of Delegates—and the President, backing down, but not very far down, selected Lewis Powell and William Rehnquist instead. It may be a slight overstatement to say that if the eight people the President has most favored for the Court were there all at once, the Bill of Rights would be as meaningful to the rights of Americans who need it most as, say, the Mayflower Compact.

Mr. Nixon is apparently not dissatisfied with the voting records of the Justices he has successfully nominated. Asked at a July 29th news conference whether he now feels the Court is properly balanced, he responded: "I feel at the present time that the Court is as balanced as I have had an opportunity to make it."

How balanced is that? Consider the positions the four Nixon nominees have taken since Justices Powell and Rehnquist joined the Court at the beginning of this year. In each of the following cases, Nixon nominees usually voted together—sometimes picking up one or more votes from the other Justices, at other times remaining a minority of four. Divisions among them have been few and less significant to issues of personal freedom.

¶Justices Burger, Blackmun, Powell and Rehnquist voted to allow nonunanimous jury verdicts in state criminal trials and all except Powell would apparently reach the same result in federal trials. Their decision severely undercuts the presumption of innocence and especially affects the chance of fair trial for political and social minorities.

¶Justices Burger, Blackmun and Powell (Justice Rehnquist did not participate in the case) agreed that the Fifth Amendment's privilege against self-incrimination could be overcome with the grant of only a narrow testimonial immunity, rather than broader transactional immunity. This means that a witness can be convicted of a crime he has been forced to testify about unless *he* can bear the heavy burden of showing that the government was using his own testimony against him.

¶Justices Burger, Blackmun, Powell and Rehnquist allowed Texas to give AFDC (Aid to Families with Dependent Children) welfare recipients a lower percentage of their estimated financial needs than it gives to the aged, disabled or blind. Justice Douglas, in dissent, pointed out that in Texas blacks and Mexican-Americans made up 87 per cent of AFDC recipients, but only 30 to 50 per cent of recipients in the other categories, and that the monetary differences could and should be seen as covert discrimination against these groups.

¶In the criminal area, Justices Burger, Blackmun, Powell and Rehnquist curtailed the right to counsel at line-ups and made an anonymous tip sufficient cause to stop and frisk a citizen on the street. They dissented from the historic decision that the death penalty or its haphazard application equaled cruel and unusual punishment, and they would have permitted a state to use prior unconstitutional (because uncounseled) convictions against a defendant at trial of a new charge.

¶The Nixon nominees voted that a private club may discriminate against black guests without losing a state liquor license.

¶In a case that starkly pitted property rights against First Amendment rights, the Nixon Justices, departing from precedent, upheld the right of a vast shopping center in Portland, Ore.—built on former public streets—to prohibit the orderly distribution of anti-war leaflets on its grounds.

¶The Nixon nominees dissented from a decision that prohibited a Southern school district from withdrawing from a county school system. The majority found that the effect of the withdrawal would be to slow integration of the segregated county system. The Nixon nominees did not believe this presented sufficient reason to stop the withdrawal.

¶Finally, the Nixon nominees held that a citizen's allegation that the Army has a data-gathering system for surveillance of lawful civilian political activity was not a complaint the Supreme Court would consider because there was no showing of "specific present objective harm or a threat of specific future harm" resulting from the Army's surveillance system.

These positions by Justices Burger, Blackmun, Powell and Rehnquist, like the activities of the Mitchell-Kleindienst Justice Department, speak for themselves. Together they weaken protections guaranteed by the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments. The President's power to control the implementation of constitutional rights through his power to nominate Attorneys General and Supreme Court Justices is apparent. So are the criteria Mr. Nixon has used in making and evaluating his nominations.

The President affects constitutional values through his public attitude toward the spirit of the Constitution. In a commencement address at the University of Notre Dame last May, Yale President Kingman Brewster said:

> The Constitution of the United States is a charter which was designed to provide a process for orderly diversity of interests and views. Its spirit, its allocation of powers, and its procedures were an inspired vision and an ingenious design to permit a diverse and scattered people to work out their destiny without resort to the dictate of the tyrant on the one hand or the disarray of fratricidal squabble on the other.

But this "process for orderly diversity of interests and views" is not self-executing. The Constitution needs a little help from its friends, and the President, more than any

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other citizen, has the power to create an atmosphere conducive to the unabashed exchange of ideas, an essential ingredient of "orderly diversity." It is up to him to tell and show the people, most of whom are not about to take great risks, that they live in a free society where the exercise of freedom is welcomed and encouraged. Or he can limit free expression and debate by creating a mood unreceptive to dissent and intolerant of his critics. The President's power to create a mood of freedom or of fear is substantial. His decision is not one the courts can ever review.

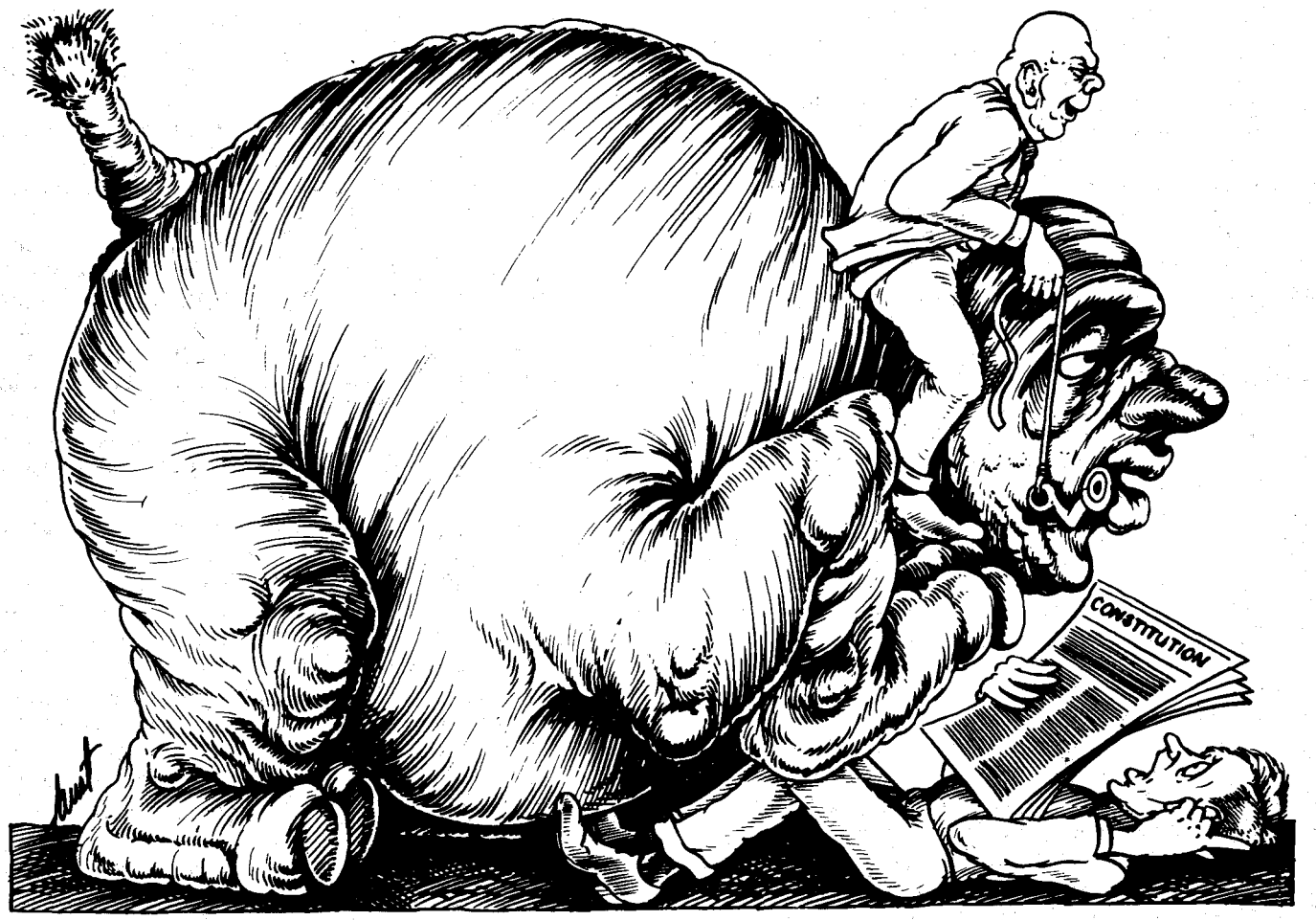
Examples of Mr. Nixon's attitude toward the constitutional commitment to free and open debate surely include his blanket reference to certain young people as "bums" and his spokemen's repeated charges that opponents of his Vietnamese policy are cowardly or disloyal or worse. But perhaps the best evidence of the Administration's attitude toward free and open debate are the frequent statements that demean the press and undermine its credibility. The Pentagon Papers case must be seen as an attempt to inhibit future decisions of less powerful news outlets because, whatever the outcome, bringing it was certain to have that deterrent effect. The case can also be explained in part as an attempt to impugn the integrity of the "liberal" press by publicizing its willingness to publish information allegedly damaging to national security. Notably, none of the nineteen judges who heard the case believed the government had proved its national security claim, though seven would have given it more time to do so.

Recently, Mr. Nixon acted personally in a way that will damage the full public debate a free press makes possible. An organization known as the National Committee for Impeachment placed a 2-page announcement in the May 31st *New York Times* asking support for a campaign to impeach the President because of his alleged unconstitutional actions in Vietnam.

A number of *Times* pressmen, protesting the insertion, delayed publication of the newspaper nearly fifteen minutes. Two days later, Donald F. Rodgers, the President's special consultant on labor affairs, waited on the sidewalk outside the *Times* building at 7:30 in the evening to deliver the "personal thanks of the President to the pressmen for their support of our troops in Vietnam and our prisoners of war." Mr. Rodgers also delivered a pen, inscribed "Richard M. Nixon, White House," to the chairman of the *Times* pressroom chapel.

Mr. Rodgers said his action involved "no question of freedom of the press," nor did he see "any pattern in this." Apparently the President sends Mr. Rodgers, carrying a supply of White House pens, to any American who indicates his or her support. The advertisement was just a coincidence.

The rapid dispatch of a congratulatory Presidential envoy to the *Times* pressmen will tend to reduce the already limited opportunities for minority views to reach



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the public. For such views, news coverage—even paid space—is hard to come by. Press coverage of dissident views and standards of advertising acceptability that invite publication and broadcast of controversial messages should be applauded. They are evidence that the First Amendment is alive and well. The President is the person whose applause will matter most.

But not this President. He chose to applaud instead an interference with the exercise of the constitutional right to publish. The content of the advertisement is protected by the First Amendment and not in issue here. The issue is the ability to convey that content to a large audience. The President's action will make it harder to disseminate controversial ideas in the future. His encouragement of the pressmen's delaying action may result, is perhaps calculated to result, in a longer delay next time. It may cause other news outlets to maintain restrictive acceptability standards or to limit coverage of dissenting opinion.

There is no way to measure the consequences in the short run. They may be slight for this one incident. However, it is not unique, and, in any event, we should not be required to speculate on the magnitude of damage to the First Amendment. The Constitution's presumption in favor of full and free debate is not to be balanced against a President's desire for political gain. But a President can choose to make that balance, and if he does, there's little doubt how he'll come out.

Three powerful weapons an administration can brandish against press outlets whose news content it disfavors are the Federal Communications Commission, the Antitrust Division of the Justice Department and the power to withhold information. In *The Engineering of Restraint*, Fred Powledge has shown that the Nixon Administration is willing to use all three. In light of Mr. Powledge's conclusions and other recent statements, it is worth while to re-examine the events during a single week in the fall of 1969 when a number of top Administration spokesmen, led by the Vice President, at once disclaimed the desire to bring, and raised the possibility of bringing, legal action against critical news organizations.

The week began in Des Moines on November 13, when Mr. Agnew managed to couple an attack on network analysis of a recent Nixon speech on Vietnam with the reminder that television stations enjoy "a monopoly sanctioned and licensed by the government." He charged that television's power over public opinion was in the hands of "a small and unelected elite" which "to a man" reflected the "geographical and intellectual confines of Washington, D.C. or New York City." The people have the right, he argued, *not* to have a President's speech analyzed for them before it "can even be digested." Despite the reminder of who licenses the airwaves, Mr. Agnew said he was not asking for "government censorship." He suggested, however, that viewers might register "their complaints on bias through mail to the networks and phone calls to local stations." Mr. Agnew certainly knows that local stations, as Richard Salant, CBS news president, has pointed out, "have the perfect right under the law, and the obligation, to turn down everything from the network that they don't want." They can put the network's news operation "completely out of business by simply turning off the faucet."

Dean Burch, the Nixon-appointed FCC chairman, chose next day to add his voice to Mr. Agnew's. He said the Vice President's remarks were "thoughtful, provocative and deserve careful consideration by the industry and the public." Mr. Burch also confirmed that nine days earlier he had happened to request transcripts of network commentaries on the very same speech whose coverage Mr. Agnew now criticized.

In the next few days, the duet became a chorus. On November 15, White House press secretary, Ronald L. Ziegler, said the President had "great confidence" in Mr. Agnew and thought he had expressed himself "with great candor." On the same day, Clark R. Mollenhoff, special counsel to the President, brought the speech closer to home when he said it "reflected the views of the Administration." Then, on November 16, director of communications, Herbert G. Klein, extended the target to newspapers and again hinted at legal reprisals: "I include the newspapers thoroughly in this, as well as the networks—if you look at the problems you have today and you fail to continue to examine them, you do invite the government to come in. I would not like to see that happen." The next day Mr. Ziegler emphasized that the Administration would also not like to see that happen, necessarily implying that it could and might.

Others who voiced support for Mr. Agnew were HUD Secretary George W. Romney, GOP National Chairman Rogers C. B. Morton and Sen. Hugh Scott who, perhaps competing with Mr. Agnew for promiscuous metaphors, said the networks deserved "a thorough goosing."

Like bookends, another Agnew speech ended the week. The Vice President picked up Mr. Klein's suggestion that certain newspapers were also among the bad guys. Monopoly was a key concept in this speech too. Mr. Agnew implied that *The Washington Post* and *The New York Times*, among others, had "grown fat and irresponsible" and said: "The American people should be made aware of the trend toward the monopolization of the great public information vehicles and the concentration of more and more power in fewer and fewer hands." And although he was not recommending "dismemberment," Mr. Agnew conspicuously mentioned that the same company owned *The Washington Post, Newsweek* and a radio and television station. The public should know, he said, that these were "all grinding out the same editorial line."

The issue highlighted by that week of speechifying is not whether the press is too concentrated or the networks unfair. If they are, there are remedies to correct these wrongs and courts ready to listen to responsible assertions of them. The probability is that the government realizes it does not have a case, and, as most lawyers know, if you don't have a case the next best weapon, especially if you're the government, is to threaten to bring one. Here, that threat may be more destructive of freedom of the press than actually bringing an action destined to be thrown out of court.

And out of court is where the Administration would end if it ever chose to bring legal action. Mr. Agnew and friends have not provided statistics showing economic concentration of the press in violation of the antitrust laws; nor have they produced a reliable content analysis showing unfairness of television commentary. This is proof a

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court would require. The FCC recognized this when, shortly after Mr. Agnew's November 13th speech, it unanimously rejected a citizen complaint that network news analysis was biased. Patrick Buchanan, the President's aide who writes the speeches and coordinates the Administration's attacks on the press, also realizes the situation. He recently agreed that pressure from the Executive branch was preferred to legal action, because it is hard to challenge a television license or get Congressional response to antitrust legislation.

Another challenge the Administration's charges would face in court is that the government is selectively proceeding against those news outlets whose stories it finds distasteful. Such selective enforcement of the law—motivated by the content of constitutionally protected speech or writing—is exactly what the First Amendment prohibits.

In by-passing the courts, the Administration has avoided the First Amendment issue, and has also evaded the requirement that it actually prove its case with credible evidence, not rhetoric. The censorship it could not impose legally it is trying to impose extralegally, for the inevitable result of the statements beginning November 13, 1969, and others like them, is self-censorship, in a way the most effective and oppressive kind of all. As Fred Powledge amply documents:

> The most significant result of the attacks, so far, has not been a series of court and administrative rulings permanently restraining the freedom of the press; for, although the administration is attempting to obtain such restraints, it has, in one sense, so far failed. Rather, it has been the subtle tendency—almost impossible to document or measure—of the press itself to pull back; to consider the controversiality of its actions before it takes them, and then, in some cases, not to take those actions—to engage in self-censorship.

This is scarcely what the drafters of the First Amendment had in mind.

Few events so well illustrate the President's regal unconcern with constitutionally guaranteed freedoms as the circumstances surrounding the Administration's claim before the Supreme Court that it could conduct unauthorized electronic surveillance of American citizens. This proposed exception to the Fourth Amendment would devour it. It would allow the broadest and in a way the most personal type of search—of all conversations between all parties at a particular location or on a particular phone indefinitely—without any Fourth Amendment protections.

The Fourth Amendment says that before the state may search a person or his or her home, papers or effects, it must have reasons and usually those reasons must amount to "probable cause" to believe something illegal will be found. Usually, too, the state must first get a warrant by presenting its reasons to an impartial judicial officer.

The Fourth Amendment was written before telephones and before technology made wiretapping and electronic eavesdropping possible. In 1967, the Supreme Court said the Fourth Amendment protected conversations from this technology, and the next year Congress set down procedures—including prior judicial authorization—before government could tap or bug.

Although prior administrations have used unauthorized taps and bugs, the Nixon Justice Department was the first to claim that the Executive had an inherent right to do so against whomever it wished whenever it thought national security—which it defined—required it.*

In support of its claim, the Nixon Administration told the Supreme Court that the requirement of prior judicial review would obstruct the President in the discharge of his constitutional duty to protect domestic security. The government also contended that security problems involved "a large number of complex and subtle factors" which courts could not evaluate. Finally, the government said that compliance with the Fourth Amendment "would create serious potential dangers to the national security and to the lives of informants and agents."

The Court unanimously rejected this reflex invocation of "national security" to justify what must be one of the most brazen efforts in our constitutional history to reduce individual freedom.

How did the Administration react to the fact—according to its own Supreme Court arguments—that the President would now be obstructed in his constitutional duty to protect domestic security, and that the lives of informants and agents would now be endangered? Did it seek a constitutional amendment or mitigating Congressional legislation? Did it warn the public its safety was now in danger? Did its intelligence operations suffer serious setbacks as taps and bugs were cut off all over the nation?

Not at all. It turns out that national security did not require much unauthorized surveillance. Only six taps and bugs were terminated, and there was apparently no rush to reinstate them by requesting a warrant. The President, asked whether he would seek legislation permitting him to do what the Court said he could not do but which his Justice Department said it had to do, answered:

> Now, as far as the Supreme Court's decision is concerned, *I see no reason to ask for legislation* to obtain that authority because the Supreme Court's decision allows the government, in a case that it believes necessary, to go to a court and get a court order for wiretapping. It simply prohibits wiretapping unless there is a court order. So we shall abide by that. [Emphasis added.]

No reason? Does the President now find it entirely satisfactory to follow exactly the procedure that his Administration earlier said would endanger domestic security? What about the dangers that were present when the case was being argued? What about the inability of judges to evaluate the "complex and subtle" factors involved? What about threats to the lives of informants and agents? What happened to those reasons? Why did the Justice Department so forcefully argue them in its effort to convince the Supreme Court that it needed the right to tap and bug without judicial approval if now the President ignores them in his reaction to the Court's decision?

One can only guess and I have two suggestions. The

*It is true that administrations prior to Lyndon Johnson's did not have to make this claim because, until 1967, conversations were not protected by the Fourth Amendment. Still, apparently no recent administration has claimed a domestic security exception to the Fourth Amendment even for traditional areas the Fourth Amendment does protect. Also, since 1934, a federal law has imposed some limits on wiretapping and no administration has claimed in court that it was legally entitled to ignore those limits whenever it felt domestic security required it—though all apparently did so anyway.

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Administration may have decided that the aggrandizement of power—it is not important whether the power formerly belonged to the judiciary or Congress or the people—is a justifiable end in itself, regardless of the Constitution's careful separation of this commodity.

Or perhaps the Administration was counting on a Supreme Court victory to keep its critics in constant doubt whether a third party was listening to their conversations. The 1968 Act permitting tapping and bugging requires subsequent notice to the target of the surveillance. But if the government had won its case, it could have listened in without ever having to inform the person it was listening to. So a second reason for claiming the right to by-pass the Constitution may have been the desire to create an impression that extensive listening could and might be going on. Whatever the facts, that impression would be enough to keep the citizenry worried that ordinary conversations may be overheard.

It is sad that a President would exaggerate dangers to national security in order to persuade the Supreme Court to curtail Fourth Amendment freedoms, and that he would do this either to acquire powers the Constitution reserves for the courts or to create an atmosphere in which his critics are reluctant to use a telephone. But the evidence—the urgent reasons for the authority followed by the casual indifference to its judicial denial—shifts the burden of a different explanation to the President.

That burden is heavy because the government's claim of the right to conduct unauthorized electronic surveillance is paralleled by other developments. In his concurrence to the Court's decision denying the claim, Justice Douglas wrote:

> As illustrated by a flood of cases before us this Term . . . we are currently in the throes of another national seizure of paranoia, resembling the hysteria which surrounded the Alien and Sedition Acts, the Palmer Raids, and the McCarthy era. Those who register dissent or who petition their governments for redress are subjected to scrutiny by grand juries, by the FBI, or even by the military. Their associates are interrogated. Their homes are bugged and their telephones are wiretapped. They are befriended by secret government informers. Their patriotism and loyalty are questioned. Senator Sam Ervin, who has chaired hearings on military surveillance of civilian dissidents, warns that "it is not an exaggeration to talk in terms of hundreds of thousands of . . . dossiers." Senator Kennedy . . . found "the frightening possibility that the conversations of untold thousands are being monitored on secret devices." More than our privacy is implicated. Also at stake is the reach of the Government's power to intimidate its critics. [Footnotes omitted.]

A final reality of the President's power over the implementation of constitutional freedoms is that judicial controls upon him are limited and there's much he can do to keep it that way. The courts are an important but not an absolute guardian of constitutional freedoms. A President can often compromise individual rights in favor of what he says are more important interests—national security or fighting crime, for example—without substantial judicial interference. Governments' failures to act are almost never subject to court review. What judge can ever pass on the recent charge by the Lawyers' Review Committee that the Nixon Administration has failed to enforce the Fourteenth Amendment's equal protection guarantee and the laws and court decisions derived from it?

Judges will go out of their way to avoid labeling Executive or Congressional actions unconstitutional. The Constitution provides the outlines but few details of the American political system. Where details occur, they are often phrased broadly and are open to different interpretations. The courts will give a President much latitude to fill in the details as he may wish. The President, not the judges, is the democratically elected representative of all the people and judges will hesitate before calling a coordinate branch of government wrong. The most dramatic evidence of this truth is the Supreme Court's refusals at different stages of America's war in Vietnam to rule on the war's constitutionality.

Furthermore, a President who finds himself in potential disagreement with the courts can do much to dissuade them from challenging him. The courts cannot defend themselves as well as a President can attack them. Presidents can speak out on issues and be heard. They can defend or criticize policies. They can create a climate of receptivity or antagonism to pending judicial decisions. Judges, on the other hand, cannot publicly debate the merits of their holdings. They speak, for the most part, through their decisions, and the tone and content of these are not readily understandable or persuasive to laymen. The power of the courts mainly lies in our respect for them and for the society of laws they allow us to live in.

A President can undermine that respect. In the school desegregation area, President Nixon, probably sensing political gain, has proposed a federal law—and has threatened a constitutional amendment—to prevent courts from ordering bussing to remedy constitutionally "unequal" education. The President, by publicizing this point, makes pro-bussing decisions difficult, even if legally justified. Judges do not judge in limbo but must consider, though not necessarily defer to, the mood of the country. And they must know that it will be harder to make, enforce and get respect for bussing orders if the Executive branch has been conducting an overt campaign to encourage public opposition to them.

A President can weaken the courts and the people's respect for them in other ways. During his first campaign, Mr. Nixon attacked the Supreme Court and promised to change it. By making the Court an issue he necessarily hurt it. Then, once elected, the quality of some of his nominees and near nominees further damaged the prestige of the Court and may, in subtle and gradual ways, come to weaken the idea of the rule of law too, of which the Supreme Court is an obvious and vulnerable symbol.

Even if the courts feel it necessary to call an Executive or Congressional action unconstitutional or to rule in the face of Presidential opposition, it may take time before they get the chance. A court can decide only cases before it. It sometimes takes many years to review questionable conduct.

For example, the Supreme Court, in considering recently whether the Executive branch could wiretap in domestic security cases without a judicial warrant, noted that "successive Presidents for more than one-quarter of a century have authorized such surveillance in varying degrees

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without . . . a definitive decision of this Court. This case brings the issue here for the first time." The issue was resolved against the government's policies, but only after they had continued for twenty-five years, including the three and a half years of the Nixon Administration following passage of the 1968 Act prohibiting surveillance without court order.

If a questionable practice does get quick court review, it does not necessarily mean that the constitutional rights involved will be protected. The courts have dismissed the cases of almost all the 13,000 people arrested during the 1971 Mayday demonstrations in Washington, D.C. But belated recognition that the wholesale arrests authorized by the Justice Department violated rights does not unviolate the rights or bring back the thousands of man-days spent in jail. Nor are there likely to be many successful suits for false arrest.

The Pentagon Papers case also illustrates the limited reliability of the courts to protect basic rights. Newspapers were eventually permitted to publish the papers, but only after fifteen days of prior restraint. During that time, the courts curtailed the First Amendment rights of the press at the request of the government, proving that if the government screams loud enough, even if it isn't saying anything, the courts will listen.

Fifteen days may not seem like much, but the consequences to the First Amendment from government-requested and court-ordered restraints on publication by the country's leading newspapers must be damaging. What if the newspapers involved next time are not *The New York Times* and *The Washington Post* but an underground press or a small-circulation magazine? What effect will the government's action in even bringing the case have on the willingness of all segments of the news media to do their job in the future?

Like any other litigant, the government has a right to assert its claim in a court of law. But unlike other litigants, the mere fact that the government makes a claim in court can have a significant impact on the future exercise of constitutional freedoms—a reality the Administration apparently did not consider or, far worse, considered only too well.

By campaign attacks on the Supreme Court, by encouraging opposition to judicial bussing decisions even if these are necessary to enforce a constitutional right, by nominating and considering the nomination of undistinguished lawyers to the Supreme Court, the President signals to the public his own feelings about an independent judiciary.

By the Mayday arrests, by conducting unauthorized electronic surveillance while pressing an unsuccessful claim to make it constitutional, by bringing the Pentagon Papers case and asking for temporary restraints on the press—all under the cloak of an exaggerated threat to national security which the courts are reluctant to second-guess—the President indicates his willingness to take advantage of the limits of the courts' powers to control him. The consequence of disrespect for a coordinate branch of government and avoidance of its authority is an increase in Executive power at the expense of judicial power and, ultimately, at the expense of a weakening of constitutional protections for the rights of citizens.

Kingman Brewster, undoubtedly aware of these issues, concluded his Notre Dame commencement address by saying that the people could not rely on Congress or the courts to protect their constitutional rights. He urged a "public constitutional conscience and a popular capacity for constitutional outrage as the last best hope for a free society in a complex and terrifying world."

I agree that the "constitutional conscience" of the people themselves must provide the final, necessary defense against erosion of basic freedoms. Still, it is good to have a President who attempts, with some success, to place the Constitution above himself. Mr. Nixon has placed it beneath him. □

RISING WATERS IN LUZON

RICHARD CRITCHFIELD
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Manila

On the occasion of his 80th birthday three years ago, Walter Lippmann saw the consequences of runaway population growth as posing the gravest threat to man's survival. At about the same time, if on a less cerebral plane, Washington seeress Jeane Dixon foresaw the Philippines' central island of Luzon "disappearing into the ocean."

Now both have come to pass in an oddly congruent way. Almost two months of torrential rainfall and typhoons in central Luzon have created the worst natural disaster in the history of the Philippine Islands, and the floods struck just at a time when the Filipinos saw hope that, at least temporarily, they could edge the country's basic food, rice, ahead of the frightening population growth.

Most of the rain fell during a precisely Biblical forty days; during the thirty-one days of July alone, 90 inches were recorded at Clark Airbase and nearly 200 inches near the mountain town of Baguio. For almost a month, a lake 2 to 10 feet deep covered the entire central Luzon plain, which extends 60 kilometers between two mountain ranges and 180 kilometers from Manila Bay to the Lingayen Gulf. Nothing like this has ever happened before within living memory.

Although the monsoon season doesn't taper off until November, the worst may now be over. The government of President Ferdinand Marcos is trying to replant 375,000 acres of rice land, restock 100,000 acres of fish ponds, rebuild virtually every road and bridge on the island, dredge and reconstruct thousands of rivers, canals and dikes,

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purify some 3,500 artesian wells, repave the streets of Manila, clear its clogged drainage canals of proliferating shantytowns, and somehow feed some 2.6 million flood victims who lost their rice harvest and will have no food or money to buy food until the next November-January harvest.

The Philippine peasants adhere to a medieval Catholicism and a remarkable number of them seem to believe that Luzon has somehow brought the wrath of God down upon it. In thousands of rural villages, or barrios, endless processions go wading through the flooded streets, swinging elaborate lanterns on chains and bearing aloft chipped, very old plaster images of local patron saints. In Manila itself, after a statue of Jesus was stolen from a Catholic Church in the seamy slum of Tondo and then turned up in a pawnshop, Marcos and his glamorous wife, Imelda, themselves led a solemn restoration procession. Leftists have their own theories: the French Pacific nuclear tests are to blame, or the American imperialists have ingeniously altered the weather so that they can test U.S. rescue techniques. There have been a few protest marches and fire bombings, but with so much going wrong these tend to get lost in the shuffle.

In actuality, the deluge was caused by four typhoons, one in late June, two in July and a fourth in mid-August, with a warm air mass in between whose persistent low pressure sucked rain in over Manila and central Luzon. To compound the disaster, the freak weather gave the other major food-producing islands of Mindanao and the Visayans their worst drought in years.

The inundation developed gradually, which explains the relatively low known loss of life, as yet under 500 (compared with an average of thirty deaths per day in the Mindanao Moslem-Christian land war). Heavy rains began flooding individual barrios in late June; that is not unusual during the monsoon, but this year the downpours kept coming. By August 1, Marcos had declared eleven provinces disaster areas and his government officially estimated that 2.6 million persons had lost their homes and crops.

The rice situation will be very precarious for the next six months. A shortfall of 460,000 tons was anticipated this year, even before the flood, and now it has risen to 800,000 tons by January. The United States has come up with $24 million worth of rice, 125,000 tons, as disaster relief, plus another $6 million; but that is only a third of the help Marcos wanted. Sugar is already in short supply; the government has commandeered Manila's stocks to prevent hoarding and speculation. As hungry flood refugees pour into Manila, crime has risen sharply; commuter busses are being held up on the way home from work in the evenings. Parks, once deserted at night, are starting to look like dormitories, and hordes of ragged urchins beg, Calcutta-style, on the main thoroughfares. The magnitude of economic damage is such that Marcos has told his cabinet recovery may take five years.

The Philippines' 40 million people, scattered over 7,012 islands, are multiplying at 3.1 per cent each year. Since 1967 the new high-yielding, fast-maturing dwarf varieties of "miracle" rice have been planted on half of the Philippines' 7.7 million acres of cropland. The hope was that this

so-called "green revolution" would create an agricultural surplus to generate enough off-farm employment and capital investment to ease the pressure on the land and stem the flood of peasant migrants to Manila, expected to double from 4.5 million to 9 million in this decade. The Philippines reached self-sufficiency in rice in 1969 and briefly had an exportable surplus for the first time in history. But since then typhoons and a new rice disease, tungro, have cut into production and when the flood came, stocks, even in individual peasant houses, were very low or nonexistent.

As most observers see it, Marcos faces two immediate problems in the next six months: keeping the lid on in Manila with enough rice and reasonably low food prices; and in devastated central Luzon, responding, with United States help, fast enough to prevent mass starvation and insurgency. Aside from being the Philippines' main rice bowl, densely populated central Luzon has always been its chief spawning ground for anti-government movements. At present there are three: Mafia-style gangster remnants of the old Huk guerrillas, a leftist-led Magsasaka peasant movement and, most important, the New People's Army, which sprang up last year with Chinese-trained cadres, a Maoist ideology and at least 3,000 men under arms. While the NPA has sympathizers among the dissenting offspring of some of Manila's richest families, so far there is blessedly little evidence of linkage with the city's fast-growing and often jobless urban proletariat.

During the height of the flood and the U.S. emergency

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relief operations there were constant echoes of Vietnam: the same old drone of helicopter rotors, the same endless gray mirror of flooded rice paddy, the same treelines along the dikes where the houses (and sometimes hostile guerrillas) were, the same earnest young army officers, now Filipino, in their starched fatigues, waiting in corrugated, sandbagged huts to brief you on how prompt rescue operations and civic action had won the hearts and minds of the people.

Of course, the real enemy down below was not a revolutionary credo but man's environment itself. One flew over a 100-mile-long sea of muddy, churning water, all of it covering what is normally a rice-rich countryside. Cascades of water rushed through a breached dike. A piece of railway track crazily twisted out of it into the air. Gravestones rose from the shallower water of the high ground, and houses of entire towns rose like gravestones where the water was deeper. My most vivid memory is of a lone man standing on a rooftop, frantically waving, a solitary infinitesimal figure in the shoreless ocean. Did he ever get rescued?

Much of the disaster was man-made. Vast amounts of water poured down from the Zambales Mountains, whose watersheds have been denuded of forests these past twenty years by heavy logging and slash and burn agriculture. Deposits of sand, 3 to 4 feet deep, have been dumped on vast areas of rice paddy, just as if there had been a flow of lava. The rivers and streams of central Luzon, which once were deep enough to provide a natural runoff, have been badly silted by intensive agriculture. Together with illegal dikes and the ever proliferating fish ponds near the seacoast, this blocked the flow of water into the sea.

As one American official put it, "All these pressures on the environment ganged up together. A whole series of things interlinked. And when it went, it went. But what can you do? More people need more fish and that means more fish ponds. More people need more lumber and that means more logging. More people need more rice, more vegetables, more meat, and that means more slash and burn farming and more dikes and canals and silted rivers."

Sadly, the Philippines' economic prospects had never looked brighter than on the eve of the flood. In Tokyo in June a World Bank consultative group had endorsed this year's development plan with a $250 million commitment, of which the United States and Japan each pledged to give $75 million. Marcos has requested an emergency meeting now to consider an additional emergency loan of $50 million.

Now it will be a very narrow squeak indeed if the Philippines is to avoid, within the next six to twelve months, a rural revolution in central Luzon. Chances are that it will be called Communist, and in Manila one hears a lot of idle talk about the need for violence to overthrow the system from rich dilettantes who probably see themselves at their best when engaged in assassinations. It is doubtful that any of the hungry peasants in central Luzon would be moved nearer a square meal by anything they could do.

The real trouble, if it comes, will come because individual peasants have been driven to the breaking point. Take the situation of Ramon Santos, 53, one of a dozen peasant farmers I interviewed during a visit to the worst flooded area. "If it goes on like this and we do not get any more to eat there will be a little revolution," he told me in a matter-of-fact voice. "The poor will seize the food of the rich."

A powerful, broad-shouldered man who said he has lost considerable weight since the flood began, Santos says he has no desire to see more violence in his life. Some of the nearby barrios have long been plagued with insurgency and banditry. Above all, there was the famine in the days of Santos' youth, when Japanese soldiers seized the rice harvests, shot those who resisted and took away the young women.

"But these days since the flood are the worst I have passed in my life," Santos said. He has gathered his sixteen hungry children and grandchildren in his house, telling them, "Whatever will happen, we are all here, we can help each other."

Santos is one of 360,000 peasant family heads, most of them sharecroppers or landless tenants, whose rice crops were totally destroyed. But the flood disaster is only the latest chapter in a history of pressures that have been building up over a generation. The Philippines has one of the highest birth rates, and one of the youngest populations on earth. And, even today, the more children a man has, the more it is felt he has been blessed by God.

Moreover, most of the land in this rice-rich but far too densely populated region (the towns seem to go on forever; as in Java, there is very little open countryside) is owned by absentee landlords, businessmen, shopkeepers and politicians who live in the towns and collect from one-third to one-half of the harvest. Some of them are even trying to collect for the flood-ruined current crop; others are keeping apprehensively silent for the time being.

As a subsistence sharecropper forced to give half his output to the landlords, Santos had been hard-pressed to feed his family the 28 kilos of rice it consumed each week. Suddenly in 1967, with the new rice, he found himself with a surplus cash crop of 15 tons a year and the prospect of doing even better once he could afford an electric pump. This new prosperity ended a year ago when his rice was hit by tungro; Santos was barely able to feed his family, to say nothing of giving the landlord his share. He had planned to pay the landlord his share for two crops after the current harvest.

The typhoon struck two weeks before it was to be cut. He lost everything—his harvest, his investment of $300 for seeds, labor, fertilizer and insecticide—and now, deeply in debt, has not a grain of rice in the house nor a peso in his pocket. He has tried for several weeks to get an emergency loan from the local bank, but he has no land to offer as collateral. With 90 per cent of the national resources privately controlled, the Philippine Government has been able to supply each local land bank with only $7,200 in emergency funds, a drop in the bucket considering that each such bank has to serve several thousand men like Santos.

A nearby canal which Santos describes as "once a brook which we used since our forefathers to water our fields" became, during the flood, a torrent as wide as the Mississippi and has left half his fields covered with drifts of sand 2 and 3 feet deep. Santos has hitched up his

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water buffalo to his wooden moldboard plow and tried to remove it. But it is a pathetically hopeless task and would take him a year or two. One solution might be for the Americans to come in with a brigade of engineers and bulldozers.

Like those of his neighbors, Santos' home is a pleasant, mahogany stilt house with bamboo slat floors and a thatched roof of nipa palm. Framed photographs of family wedding groups and plump, rosy little girls in white communion dresses testify to better days. There is a picture of his brother in Chicago; among almost all the barrio families there is a nephew in the U.S. Navy, or a daughter-in-law in San Diego or a son working on Guam.

The only landlord in the barrio who has not yet fled to town told me he could not sleep at night. He had built a new house before the flood—for $10,000, which is a lot of money in the Philippines—and now with his tenants refusing to pay him rent, he is as poor as everyone else. "I am afraid at night," he said. "If the robbers cannot take any food from you, they will take the flesh off your bones."

Santos' emaciated, toothless wife, Maria, called such men "the big crocodiles" and said they were all eating. Three times, she said, the water rose to 9 feet around the house and for four days there was no food at all. Government relief reached them fourteen times, usually just a single loaf of American-baked bread called "nutribuns," or a handful of rice that she stretched into gruel. By reboiling the coffee grounds, she managed to give everyone a cup in the mornings.

"Gruel," she laughed, making a tragicomic gesture. "Six months before the harvest and only gruel to eat and already our eyes are getting bloodshot and dark." Like most of the neighbors, she felt the Americans should somehow reach the people with more food.

The Santos family is now trying to survive on what weeds, rats, snakes, water plants and government relief goods they can get. If he can get government-supplied seeds, Santos may be able to replant at least part of his 7.5 acres in a week or two. Then perhaps he and his family can endure until the next harvest. Otherwise the outlook for central Luzon is thoroughly bleak. □

PRISONERS & THE MINIMUM WAGE

SLAVERY IS ALIVE AND WELL

BRUCE JACKSON
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One day last June in the repair shop in the Oregon State Prison, a black inmate gave me a Xeroxed sheet of paper. "This is what it's all about," he said, and walked away to the far side of a drill press. The sheet read:

> *13th Amendment of Civil Rights*: There shall be no slave labor, but equal and ample embursement for services rendered by those employed or taking a vocation with the exception of a individual convicted by a judicial court and sentenced to a penal institution. This is where penitentiary's get their legitimacy.

What the document lacks in grammatical felicity it makes up in appropriateness. When I got home, I looked up the Thirteenth Amendment to the Constitution. Section 1 reads:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States, or any place subject to their jurisdiction.

The only place in this country where slavery is still permitted by the Constitution is prison (and, some argue, involuntary military service, but the courts have rejected that claim), and, as the Oregon convict memo points out, it is through the Thirteenth Amendment that prison as it now operates in America derives its legitimacy.

Something between $5,000 and $10,000 is spent each year to maintain a prisoner in a state or federal prison. In most prisons, there is insufficient work to keep all the inmates busy, and what work there is is usually boring and uninstructive. Inmates who do work stamp out license plates in the prison tag plant, pick cotton, cut sugar cane, make clothing for prisoners and inmates of other state institutions, manufacture brooms and chairs, maintain highways, etc. Most of those who work are paid very little; some are paid nothing at all. Not only do inmates not receive fair wages for work done; they rarely receive compensation for injuries received while doing those prison jobs.

I knew a prisoner named Frog about ten years ago, who lacked most of the fingers on his right hand. I asked him what had happened.

"Lost 'em in the tag plant," Frog said.

"Goddamn, Frog," I said, "that's terrible. Did you get any compensation or anything for that?"

"Yeah. I don't have to work in the tag plant no more."

"What do you do now?"

"Nothing."

"At all?"

"Nothing at all."

I talked with some men in the prison band. They had been practicing in an old building all morning and were just returning from lunch to practice some more. I was surprised the prison administrators let them spend so much time on their horns.

"*Let!*" one of them said. "We aren't *allowed* to do anything else."

"If you're in the band, you're in the band," another said. "It's what you do all day."

"Why?"

"What else is there to do?"

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Very little, it turned out. Inmates could make brooms and clothing and license plates; they could clean the prison. And that was it. As a result, the men were locked in their cells about seventeen hours each day. Nothing else could be done with them, according to the warden, because business organizations put such pressure on the state legislature that the prison couldn't get permission to set up any real industrial operations. And where business organizations hadn't applied pressure, the unions had done so.

There has been some agitation in recent months for a minimum wage law to apply to prison inmates. Some have advocated that inmates who work at trade jobs in prison should be paid what they would get in the free world. The call for union wages for convicts was made recently by James R. Hoffa, the former Teamsters' union president who served fifty-eight months in federal prisons. Attica inmates last summer proposed union wages for inmate labor and cited a number of benefits that might accrue from such a policy.

It "will eliminate the spending of taxpayers' money for rooms, meals, medical care, clothing, shoes, court-appointed lawyers, etc," their proposal said. "This will enable an imprisoned person to support his family and prevent them from going on welfare, adding to the already overtaxed law-abiding citizens. . . . This will enable imprisoned persons to pay retribution to the victims of their crimes, if the case warrant such. . . . Also, he and she can pay off debts they accumulated while free. . . . This will enable those in prison to pay their own way through college (provided that the needed facilities are made available). . . ."

It is perhaps naive or unrealistic to expect so much from the introduction of a fair-wage concept to prison operation, but certainly the average convict and his family would be far better off than they are now. Most prison administrators I've talked with claim they have no objection to minimum wages for convict workers, but say they cannot imagine their state legislatures passing such a law, nor can they imagine their legislatures passing laws permitting prisons to have the kinds of sophisticated industrial operations that would make such a plan economically feasible.

Most equipment in prison industry is anachronistic, so men and women who learn to operate those machines are not prepared to take on similar jobs in the free world. Prisons can afford industrial operations with such machinery only because they have negligible labor costs. If labor costs were made realistic and directly accountable, it would be imperative to adopt modern techniques and devices.

At that point fear of competition becomes acute. A spokesman for the California Department of Corrections said: "The Correctional Industries Commission operation in this state is regulated by a governor-appointed commission. The amount we can produce is limited by statute, we're required to charge what has been determined as a going price, we can't be undercutting the market. We have all kinds of rigid statutory controls. I can remember we were going to do a little bookbinding operation at one place. The bookbinders came in to protest and said, 'We're all for good constructive kinds of work for convicts, but why don't you make bicycle racks?' "

Philip D. Guthrie, chief of Community Relations and Information of the California Department of Corrections, added, "We couldn't, because of the unstable, inexperienced kind of work force that we're dealing with, plus the security control. . . . Like, we're making a desk, and we're competing under the law of this state with private desk manufacturers. We have to charge the going price by law, we can't cut-rate stuff. We have to enter into bidding like other people do and stuff like that. Well, we do this with a very inept work force and a lot of turnover, and we do it with probably less automation than you find in private industry. So if you up the pay rate to the minimum wage we probably could not come out without costing the General Fund something each year."

I don't know that it would be such a calamity to cost the General Fund something each year. What Guthrie is saying is, they can afford the industries they have only because they pay so little and their machinery is so outmoded. If they had to pay a minimum wage, then the prisons would have to use modern machinery, which means men trained in prison jobs would learn on the kind of machines used in the free world, which means they would be employable rather than anachronisms on release. That ought to be seen as a worth-while investment.

The social effects caused by the fact that most convicts have no money of their own are serious. Prison develops an obvious power system set up around those few with money. The professional criminal who has some money set aside, the child of a wealthy family, the dude who has some friends willing to send him some money now and then—these persons are all in positions of great luxury. Because so many inmates have so little, those with *some* money can guarantee themselves better food, better clothing, better job and cell assignments; one can buy drugs, sex, protection. Not everywhere, but in most places. Weaker inmates with no other source of funds often become homosexual, turning tricks for money; others do petty services for other inmates. One woman in the federal prison for women at Alderson, W. Va., said, "So you have people running around being maids for other convicts, and that's no good. Also, it corrupts the gay scene, because you have all those commercial relationships."

And there are the outside costs. The notion that paying a convict fair wages would put an intolerable burden on the community should be examined against the real costs of maintaining a prison system, which include not only the direct operation of the prison but also support for the inmate's family while he is in prison, and the social costs to those families living the marginal and humiliating existence that welfare generates.

Most inmates are now paid very little for industrial and service jobs within the institution; some states pay nothing at all. Texas is one of those. The director of the Texas Department of Corrections, Dr. George Beto, points out that inmates in Texas prisons eat better than do inmates in most states (because they grow their own food in an agricultural operation encompassing 100,000 acres of land), and live in newer prisons than do inmates in most states (because they are permitted—unlike prisoners in most states—to build their own prisons, even to make the

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bricks used in the walls). "We pay them in time," he says, referring to the Texas policy of giving a worker in the higher job classifications two days' credit for each day served. The notion there seems to be: you were caught committing a crime and lost so many years to the state, and if you work hard the state will let you buy back some of those years. The Texas notion might seem ludicrous were not the scale of payments in the other states so minimal.

California pays 2¢ to 16¢ per hour (just raised by 3¢ per hour, but it hadn't gone through the Governor's office at the time of this writing) which means 80¢ to $6.40 per week. Inmates in the state's forestry camps—minimum security inmates who make up about 10 per cent of the state's prison population—receive 60¢ to 90¢ per day. A Kentucky inmate told me he received 8¢ a day (in that prison a jar of instant coffee sold in the canteen for $1.25; the same coffee sold in town supermarkets for 99¢).

The federal prison system has four grades for inmates on industrial jobs (inmates on nonindustrial jobs and inmates with no jobs are not eligible for hourly pay) which range from 17¢ to about 52¢ per hour (these data are from former inmates; the prison system refused to reply to two requests for information about inmate wages). Most inmates who are paid get the minimum rate.

In Alderson, one former inmate told me, the jobs interfered with rehabilitation work because "Production is God there, and it takes precedence over everything." Inmates on industrial assignments sometimes had their dental appointments canceled by the work supervisor; if they were good workers, they would be deprived of school time because the supervisors (who were judged on their production) wanted them on the job. If they were dropped in pay grade they also lost extra days of good time each month, so the pressure to stay on the job and out of school was terrific. Not only was there no pay for attending school but the crafts learned in school were often useless within the prison economy. One woman turned down a hospital office job in the prison, where she might have used the skills she had learned in classes, and took instead a job in the commissary as clerk: the commissary job paid, the clerk job did not. For those not on an industrial job at Alderson, there is a meritorious service award of $10 to $25 per month, but one must have been on the job three months to be eligible for it and any disciplinary report in the previous three months can wipe it out; matters as trivial as a messy room could get it canceled. Most people got nothing at all.

The New Jersey Division of Correction and Parole, in its Departmental "Standards" memo on inmate wages says:

> The Manual of Correctional Standards of the American Correctional Association states that "Prisoners qualifying as cooperative and qualified workers, and contributing to the financial success of the activity in which they are employed, should receive financial remuneration for their efforts. Such employment provides a means of contributing to the support of their dependents, and the building of a financial reserve for their release, as well as a means of maintaining and improving their morale and self-respect while under confinement.
>
> "Contemporary authorities in the field of corrections emphasize that the principal value of work activity is to be found in the opportunity for the inculcation, or the reactivation, of attitudes, skills, and habit patterns which can be instrumental in the rehabilitation of many offenders. Thus, remuneration for work performed must be made according to a scheme of rewards for the improvement of performance as well as realistic enough to provide the inmate with a minimum of funds necessary to support the normal expenses incurred in his daily life for which no provision is made by the state."

After that rather grand introduction we find: "the projected average wage for an inmate in an operational unit will be $.7660 per day. The minimum wage earned will be .65 per day and the maximum . . . will be $1.00." The notion that on such a scale an inmate is going to have any money with which to help his family is of course absurd. It is barely enough to buy stamps, stationery, toothpaste, cigarettes.

Bad as things are in prison, they sometimes get worse on release. The ex-convict hits the streets with little or no money. Washington, Ohio and a few other states let him collect a form of unemployment compensation for a while, but most allow him nothing. In California, according to authorities there, "inmates with less than $200 in their trust accounts may receive up to $68 cash when they are released from prison. Inmates have the option of taking some portion of this amount in clothing." Wow!

The New Jersey protocol on "Gate Money" is again instructive: "Many inmates require financial assistance on their release from correctional institutions because they lack the personal and family resources to sustain themselves during the critical period between release and employment. . . . Without financial aids in this period, the temptation to return to criminal activity is enhanced." Between 1918 and 1969, New Jersey inmates received $25 gate money. In January 1969, that was increased to $50, with the possibility of two additional $50 payments, "dependent upon demonstrated need and evidence of the inmate's ability to obtain and maintain employment. . . ."

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That means those in the most obvious trouble on release are least likely to get the additional help. Moreover, "Excluded from consideration [for the extended grant], generally, are those high-risk inmates with a history of alcohol and drug abuse, and those with severe medical and/or psychiatric difficulties whose employability can be considered to be minimal." Which is to say there is no help for the helpless or the formerly helpless in the state of New Jersey.

Even when gate money is legally permitted, getting it is sometimes made unnecessarily difficult. The authorities at Alderson give it to women going out only if the inmates demand it, and since the preparations for leaving the prison take place in the dead of night, inmates don't usually stop to argue that they haven't gotten their envelope. One inmate who insisted on the money her second time there was told she would receive $50 gate money; when she was released and on her way back to New York, she opened the envelope and found $25 inside. "I wasn't about to go back to Alderson and argue," she said, "and they knew that."

So our present system is one that encourages utilization of outmoded production techniques because of low labor costs, trains no one for the free world, supports the old prison power structure, gives no one the money needed for those first critical months on the street. A minimum wage, even with some deductions for room and board, would eliminate all of those evils. In addition, prison inmates would, for the first time, be paying into the Social Security System, which means they would be contributing to the support the state would be giving most of them at old age anyhow.

More important, there is some dignity connected with pay for work, pay that is fair for work that is reasonable; and dignity, more than anything else except justice, is egregiously absent from our prisons.

The immediate costs of a change to a fair-wage system for convict labor will be high, but in the broad view I think it probable that the costs to society will not be exorbitant. Social costs to families will be reduced, because families will have more sense of themselves if they have a wage earner, even if he is absent for a time. The inmate will have some sense of purpose to his work, some reasonable incentive; he will be able to support himself while in prison with some semblance of dignity. Internal hustles, for those with jobs, will be reduced; it won't be necessary to turn tricks or be a maid to get bare necessities. A major stimulus to recidivism—no money when on the streets—will be reduced. And a change in the accounting system to show the true costs of prison may very well show that giving inmates a fair wage and letting them pay room and board and keep what is left over will not cost the taxpayers much more after all.

The principal objection to a fair wage for convict labor that I hear is that the unions won't go for it, the unions won't accept training and apprenticing a bunch of convicts when there is already enough insecurity about placing their own people, enough tightness to the job market, enough difficulty getting cousins and sons into the journeyman ranks.

I think of the new campus of State University of New York at Buffalo a few years ago. It was planned as a Brasilia on the Niagara frontier, a $650-million project that would absorb the largest expenditure of public money this side of Vietnam and the state office complex in Albany. But there was a problem: the unions had almost no minority members. Construction on that campus was suspended for a full year while the unions learned that admitting a few blacks and Puerto Ricans was preferable to loss of those jobs. It was a nasty business, but it was business, ultimately, and in America business wins in the end.

The unions and corporations will make nothing beyond token gestures for convicts until it is somehow economically advantageous for them to do so. It is in fact *already* economically advantageous, but they cannot see it because the economics of prison are so opaque that they don't know how much the operation really costs. They can and should be taught.

I think there will be one basic problem in prison if a minimum wage or a union wage requirement were required: who gets the jobs? Unless a minimum wage is paid to everyone in prison, which would negate the incentive for working on jobs and would reward those who refused to work at all, then some inmates will have a lot of money and other inmates will have no money at all. That is a problem now, and introduction of a minimum wage will only redistribute those who have and those who have not; that sort of reform will not eradicate the inequity.

I suggest this: every inmate willing to take on a job assignment, or every inmate enrolled in a training program, should be paid the minimum wage. If an inmate who is not on a job is offered one and refuses it, then his payments cease. Inmates can be billed for room and board; the amount of money that can be expended within the prison should be limited, both to prevent too much power from accruing to those with the best jobs and to make sure that inmates will have some money on release or will send some money home. Inmates on skilled jobs should get what people with similar jobs get in the free world. It will be the state's responsibility to find reasonable work for those willing to work reasonably. One immediate effect of this will be the reduction in power of the very rich and the professional criminals. A fair wage might introduce democracy into our most totalitarian institution.

An old friend of mine, who has spent most of his adult life in New York prisons, said when I talked with him about the minimum wage notion, "What's wrong with that idea is it's *fair*. If we're going to send them there and then be fair to them, then they shouldn't be there. Not most of them anyway. If we're going to spend that money, we should spend it for other things. For things that will do good."

I think my friend is right, but I don't think our society is quite ready for that yet. His remedies are radical, and a fair wage for convict labor is merely a liberal option. But it's better than the outrageous system we have now—a system that is based on exploitation, impoverishment, humiliation; a system that ultimately does far more harm to the rest of us—those who never steal or kill or deal—than it helps us; a system that at once engenders terrible idleness and absurd labor. □

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BOOKS & THE ARTS

Sociology: Orthodoxy or Aggiornamento?

RADICAL SOCIOLOGY. *Edited by J. David Colfax and Jack L. Roach. Basic Books. 492 pp. $10. Paper $6.95.*

RADICAL SOCIOLOGY: An Introduction. *Edited by David Horowitz. Canfield Press. 307 pp. Paper $3.95.*

TOWARD A CRITICAL SOCIOLOGY. *By Norman Birnbaum. Oxford University Press. 451 pp. $10.95.*

MICHAEL KENNEDY
Mr. Kennedy teaches American civilization and history of science at the State University of New York Maritime College.

One of the most interesting phenomena of the late 1960s was the appearance of small groups of radicals at the annual meetings of the various learned societies. In 1969, for example, young radical sociologists seized the microphone at one of the sessions of the annual December meeting of the American Sociological Association, and made speeches to the audience. The television networks, the newspapers and the weekly magazines gave these clashes almost no coverage; the few news articles that did appear usually spoke in terms of "outbreaks" by "young dissidents," who were protesting against the Vietnamese War.

Many of the older and more conservative members of the American Sociological Association apparently shared the bewilderment of the press. Letter after letter in the next few issues of the official journal of the association plaintively asked, why must these young men and women do these unpleasant things?

And this confusion is really not very surprising. The word radical has been used so much during the last four or five years that to most people, perhaps even to most academicians, it has ceased to have much meaning. We have heard of radical politics, radical literature, radical dance, even a radical approach to bread baking. Almost anyone who disliked anything, or who did things slightly differently from everyone else pinned a radical label on himself. The general public could well be forgiven for simply thinking the word synonymous with dissatisfaction, or confusion.

But the differences between radical academicians and their middle-class colleagues cannot be explained simply in terms of the young versus the old, or the nontenured versus the tenured. As the three books under review show so clearly, these disagreements ultimately spring from differences about philosophy, about cognition and perception and the nature of reality.

One of the great lacks of American higher education is that the whole Central European intellectual tradition that stretches from Hegel and Marx in the early 19th century to Lukacs and Adorno in our own day, is ignored by most American colleges. The majority of sociologists at the 1969 meeting of the American Sociological Association literally did not understand much of what the radical sociologists were saying, what they meant and wanted.

Most American sociologists, of course, like to think of sociology as a scientific discipline, and of themselves as scientists whose field of study happens to be society. That is, a professional sociologist is a man who studies society, or more commonly, a part of society, in exactly the same way that a marine biologist studies plankton or corals, or an astronomer studies the stars. The sociologist himself remains rigorously detached from whatever he is studying, just as a crystallographer does not become emotionally involved with the crystals whose structures he is observing. The ultimate goal of this kind of sociology is the creation of a body of knowledge about society that can be stated in the same manner that knowledge about the physical world is stated, that is, a sociology of statistical regularities, prediction and control.

To radical sociologists, who are familiar with the intellectual tradition of Hegel and Marx, this kind of thinking is intellectually and morally absurd. They would deny that it is ever possible for the knower to separate himself from what he knows, and to see the objects of his knowledge in their absolute purity, as it were. No man, they would say, ever comes totally naked to what he sees; his mind is always clothed in the mental habits of his particular time and place. Moreover, the very act of perceiving itself alters what is perceived. This is a well-understood principle in nuclear physics; radical sociologists believe it is equally true in sociology. Their position is that when a white, middle-class sociology professor visits a black ghetto and studies the people there, in reality, despite whatever pro-black sympathies he personally may have, he is supporting the ghetto system. By viewing these people, however sympathetically, as objects of study, he is implicitly accepting society's definition of them as people who should be in ghettos. Only if he challenges this definition, and works with these people, helping them create new definitions of themselves, can he truly say that he is not reinforcing society's definition of who these people are, and how they should be treated.

Questions of cognition and perception, then, are central in separating radical sociologists from traditional academic sociologists. To radical sociologists, the objectivity and detachment that are so prized by academic sociologists are only methodological screens, whose chief function is to hide the sociologists' submission to and acquiescence in the status quo, both from themselves and from their readers. This radical position on the social nature of knowledge, and on the inseparability of knowledge from the knower, is of course anathema to most American academic sociologists. To these men, who believe that the social sciences should model themselves after the natural sciences, the insistence of radical sociologists on the inescapably personal nature of all social knowledge, is almost incomprehensible.

These three books all exemplify, each in a very different way, the radical perspective. David Horowitz's *Radical Sociology* is a skillfully designed textbook, containing excerpts from leading 19th- and 20th-century radical sociologists. The Colfax and Roach anthology examines radical sociology from the point of view of its young 20th-century practitioners: exactly what is radical sociology; what is the relationship between radical sociology and academic sociology; how may radical sociologists remain radical and still make a living in the United States? Norman Birnbaum's *Toward a Critical Sociology* contains a number of the essays he has published over the past twenty years in *Dissent* and other Socialist journals. His wide learning, and his years of personal acquaintance with most of the leading figures of the postwar European Left, give some of his essays a historical depth that is rare among modern Socialist writers.

I hope that all of these books are widely read. Taken together, they throw floods of light onto recent American history. When one looks back at the 1950s and 1960s, one is struck by the peculiar senselessness of the past two decades. A pervasive feeling of meaninglessness—nothing ever making any sense—hangs

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over the last quarter of a century of our national history. These books, however, do what most books on American sociology and history don't do—they draw patterns and suggest relationships. Their authors connect our recent domestic history with what the U.S. Government has been doing abroad since 1945.

America has changed much more during the past thirty years than most people, including most academicians, realize. Every year since 1941 the federal government has spent billions of dollars for military purposes. This continued flood of money has sustained the standard of living of the entire middle class; it has also enabled our great corporations to accumulate enormous reserves of capital, and to buy up smaller companies all over the United States. Since 1945 power has decisively shifted from the smaller cities to a few great urban centers. Rome, Utica, Syracuse and a thousand other small American cities have ceased to be places where important decisions are made.

This process of rapid industrialization, with its sudden destruction of old structures of power and authority, is familiar to us from the recent history of the undeveloped countries; we are less likely to see the concept as applicable to recent American history. Since 1945, however, millions of Americans have been shaken free from their traditional allegiances and identities. What little was left in 1945 of local sentiment and patriotism, of local identity and loyalty, has now all but vanished.

One wonders what will happen next. To millions of middle-class Americans one city is very much like another. What is most real to most of these people is their money—their savings and their pension plans. If inflation continues to mount, the already fragile social identity of millions of people will become increasingly precarious.

The last twenty-five years have also seen a vast expansion of American overseas investments. By 1972 there were overseas divisions of American corporations in almost every non-Communist country. In economically undeveloped countries, in particular, these giant corporations have often exercised an overwhelming influence. The relationship, though, between the great corporations and the U.S. Government is a subtle one. One sometimes reads in radical publications that American politics is dominated by a sinister conspiracy of corrupt politicians and greedy businessmen. The matter, unfortunately, is not that simple—few of the architects of our foreign policy since 1945 have been corrupt; most of them undoubtedly thought that what they were doing was for the good of the country. All of them sincerely believed in our American ideology of capitalism and free enterprise. To these men, however, a free country also meant an economically open country, that is, a country that an entrepreneur could come into and invest in, without fear of confiscation or troublesome government regulations.

In the American 19th century such a definition of freedom made sense. America then was a growing country that desperately needed foreign capital. In the middle and late 20th century, however, this definition of freedom has very little relationship to the experience of the leaders of most of the undeveloped countries. To men like those whose recent history was one of revolution from foreign political domination, the request of a giant American corporation to be allowed to come into their country and develop its resources seems very suspicious. In their eyes, to grant such a request would simply be to submit to foreign rule in another form.

The poverty, moreover, of many of the African and Asian countries often led the new governments formed after independence to try to control and direct the development of their resources. For American corporations, this has sometimes meant either nationalization or burdensome regulations.

Very little of this has been comprehensible or acceptable to the Washington government. To the White House and the State Department, these new nationalist governments with their Socialist rhetoric, intent upon controlling their natural resources, have seemed strange and menacing. One of the important facts of the postwar world has been the continued furtive hostility of the United States to the new independence movements, and to the governments that have followed them.

The contradictions and difficulties inherent in this situation are almost too obvious to need pointing out. The military necessities that follow from our rivalry with Russia, and the movement of American corporations into a hundred foreign countries, have brought the United States into complicated relations with almost every country in the world. Our political rhetoric, our military needs, and the financial ambitions of our corporations all require that our government expand the area overseas in which U.S. corporations can operate, or at least keep this area from being sharply reduced. Yet to keep a large portion of the undeveloped world open to capitalism becomes increasingly expensive. The government does not dare to pay the cost of the war in Vietnam through direct taxation; indirect taxation, in the form of inflated money, is the way most of the cost is being met. But continued inflation creates terrible tensions in the country, demoralizes millions of people, and makes the entire political and social system here increasingly unstable.

Both Norman Birnbaum and several of the writers in Colfax and Roach expect that radical sociology will be able to supply important conceptual elements to New Left politics. At present, of course, radical sociology is still more of a promise, or perhaps one should say, a perspective, than a reality. Most radical scholarship is still inferior to standard academic scholarship and most of America's leading sociologists still reject the radical tradition.

The need, however, for a more radical sociology is great. As Birnbaum points out in several of his essays, probably the most important problem of contemporary politics is the continuing, steady erosion of freedom all over the world. The tri-

GHOSTS DYING

We make no ghosts,
those events which
sucked in time
and breathe it out
to our amazement,
like the blossom
coming back each year

when you and I
live love and die
it is different,
housetrained in time
our behaviour
watches us.

in the grass
in spring
we flatten nothing
in killing
we keep our distance
and praying
god gives not forgiveness
but his sad pity

soon our old ghosts
will die
the stairs
will stay silent
the lanes empty
and at each table
hands will cup
merely bread

not having lived
we kill our dead
leaving ourselves
as clean
as the antiseptics
we buy.

Edwin Brock

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umph of socialism, he remarks, has not made men free. There is alienation in East European countries as well as in the capitalist West. Most of the population in the state Socialist societies, again like the West, have little influence over political decisions. The power of irresponsible bureaucrats is growing in Socialist countries as well as in Western Europe and the United States. And everywhere, in the East and the West, the state is ever more repressive and uncontrollable.

The power of sociologists of any persuasion to halt these changes is limited. The founders of sociology in the 19th century, however, saw it as a liberating discipline, one of the ways by which the human spirit would free itself from slavery. In the 20th century, sociologists went into the universities, and sociology became just another academic specialty. The reappearance of the bold, radical spirit of 19th-century sociology is, to this reviewer at least, a most hopeful sign. □

Toward the End, an Effete Snob

A PEN WARMED-UP IN HELL: Mark Twain in Protest. *Edited by Frederick Anderson. Harper & Row. 183 pp. $6.95.*

CHARLES BAZERMAN
Mr. Bazerman is assistant professor of English at Baruch College, The City University of New York.

A Pen Warmed-Up in Hell is the newest package of familiar Mark Twain delights, short pieces of social and political criticism gathered from his novels, letters, magazine articles and manuscripts. They are the responses of a 70 per cent sane man to the 100 per cent bona fide follies of his age; 70 per cent is enough sanity to be fascinating. Some of his issues are now dried up—slavery and regular lynchings; most remain—anti-Chinese paranoia, cultural imperialism, economic exploitation and the too quick appeal to national loyalty to support policies of destruction and malice.

Despite the title this book does not suffer from the soul-breaking weight of moral rectitude. Mark Twain is still a self-admitted human being. His ironies are those of a man trying to make his way through this muddled life, his observations sound the depth of the water he has found himself in, and his complaints against humanity are directed to the difficulties he has found with himself. The volume closes with an excerpt from his autobiography:

> Every man is in his own person the whole human race, with not a detail lacking. I am the whole human race without a detail lacking; I have studied the human race with diligence and strong interest all these years in my own person; in myself I find in big or little proportion every quality and every defect that is findable in the mass of the race. . . . What a coward every man is! and how surely he will find it out if he will just let other people alone and sit down and examine himself. The human race is a race of cowards; and I am not only marching in that procession but carrying a banner.

Moral cowardice particularly attracts his attention. He sees moral cowardice as the inability to extricate oneself from publicly approved follies. Mark Twain talks of "The United States of Lyncherdom":

> It has been supposed—and said—that the people at a lynching enjoy the spectacle and are glad of a chance to see it. It cannot be true; all experience is against it. The people in the South are made like the people in the North—the vast majority of whom are right hearted and compassionate, and would be cruelly pained by such a spectacle—and *would attend it*, and let on to be pleased with it, if the public approval seemed to require it. We are made like that, and we cannot help it. The other animals are not so, but we cannot help that, either. They lack the Moral Sense; we have no way of trading ours off, for a nickel or some other thing above its value. The Moral Sense teaches us what is right, and how to avoid it—when unpopular.

The more normal cowardice, the military kind, he looks on with favor as a wise human impulse. "A Campaign That Failed" is a backwoods rhapsody on the difficulty of cooperation when the project is to kill others or get yourself killed. At the beginning of the Civil War, Clemens joined the Confederate militia at Hannibal, Mo. His messmates were the likes of Peter D' Un Lap (formerly Dunlap) who gave all the encampments dandy names. By fortunate retreat and flanking maneuvers they avoided the enemy—only once did they meet a lone Union soldier. On order, Clemens fired a shot which he thought responsible for the death of this man with whom he had no quarrel. Five other men were sure that their bullet was the fatal one. The felt shame of the killing was deeper than any stigma of cowardice. This story was originally published in *Century Magazine* as part of a series on battles and heroes of the Civil War.

> You have heard from a great many people who did something in the war; is it not fair and right that you listen a little moment to one who started out to do something in it, but didn't? Thousands entered the war, got just a taste of it, and then stepped out again, permanently. These, by their very numbers, are respectable, and are therefore entitled to a sort of voice—not a loud one, but a modest one; not a boastful one, but an apologetic one. They ought not to be allowed much space among better people—people who did something—I grant that; but they ought at least to be allowed to state why they didn't do anything, and also to explain the process by which they didn't do anything.

In statements like this humor helps courage; no one can be sure that you are doing anything more than making a joke. The unorthodox opinion is always somewhat "funny" to the good-natured everyday man. You can say more to him if humor can suspend his beliefs and tickle his memory of actual situations.

In the selections from the 1870s and 1880s the humor depends on the difference between situation and expectation; in the pieces from after the turn of the century there is a more direct discourse of outrage. In his comments on the Philippine intervention Mark Twain is no longer a young man toying with being a soldier and learning the terrible consequences; he is aware from the beginning that he is witnessing an outrage. He no longer dallies with being respectable or patriotic. From the beginning he rails against military vainglory and the slaughter of a benign and helpless people. At the end he is not kind to those who retain some irrational loyalty to war as part of the historical process.

> Harvey said he believed that the shock and shame of this episode would eat down deeper and deeper into the hearts of the nation and fester there and produce results. He believed it would destroy the Republican party and President Roosevelt. I cannot believe that the prediction will come true, for the reason that prophecies which promise valuable things, desirable things, good things, worthy things, never come true. Prophecies of this kind are like wars fought in a good cause—they are so rare that they don't count.

The same progress can be seen in other pieces. "The Great Revolution in Pitcairn," dated 1879, is an extended fantasy on what happens when an aggressive American gets into the middle of a stable, peace-loving island community. Humor touches all the bases of connivery, vainglory, ambition, impracticality and social disruption. The progress into uncivilized civilization is tempered by the quality of a Mark Twain tall tale. In a 1901 piece, "To the Person Sitting in

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Darkness," Twain gives a straightforward critique of European and American imperialism in the Orient. He demonstrates how our cultural and religious proselytizing hide our business interests and lead to the degradation of long-established cultures. He turns to humor only at the end of the essay to suggest what we might say to the nations we exploit if we were honest about our intentions and actions.

There is nothing extraordinary about this progress of Mark Twain's discourse —many men have become more direct and sharp with age. But in the case of Mark Twain we have been led by a traditional view of the man and his career to associate this development with increasing disillusionment and bitterness. And indeed it is understandable that we find the sentimental notions of *Huckleberry Finn* more attractive than an explicit critique of our national follies, but I think it a bit thick to take our pleasure to be the sign of an author's intellectual strength or weakness. Directness and clarity are achievements, whether or not we are pleased with our portraits. □

Between Anger and Despair

THE MEGASTATES OF AMERICA: People, Politics, and Power in the Ten Great States. *By Neal R. Peirce. W. W. Norton & Co. 745 pp. $12.95.*

WILSON C. McWILLIAMS
Mr. McWilliams is professor of political science, Livingston College, Rutgers University.

A lot has happened to us in the quarter century since John Gunther wrote *Inside U.S.A.*, and Neal Peirce is right to try to bring the story up to date. We are, for one thing, even more sensitive to our need for the inside story, but while there is a Washington expert on every corner, politics in the states—where so much of political life really happens—is *terra incognita,* not much more familiar in one's own state than in others. State politics is the stepchild of the mass media, left neglected in the limbo between local human interest stories and the "big issues" of national politics. But there is a growing recognition that something is wrong in a political world which consists of issues without human interest and individual human stories which seem unimportant. Peirce, then, is dealing with an area which is close to the heart of our political crisis.

His decision to write several books in place of Gunther's single volume—this one and further books dealing with the other forty states—is defensible. It allows him much greater depth of analysis, and if the total number of pages required to "cover" America looks formidable, Peirce writes with professional grace and considerable charm. His discussions of the "megastates" are always intelligent; he knows and is sensitive to the issues of money and power as men in political life see them; he has generous sympathies and decent principles. Any reader of *The Megastates of America* will find it entertaining, informative and generally worth while. In short, I recommend it.

I do not like it. My distaste does not affect my judgment of the book's value and it is not due, I hope, to minor annoyances like Peirce's fondness for journalistic clichés or to the tone of restrained boosterism which characterizes his treatment of problems. I find it defective because it seems to me that Peirce somehow misses the point of the years since *Inside U.S.A.*, especially of the years of visible crisis since 1960. The facts are there. The events are chronicled. Peirce approaches the job with evident good will. But the terms of his analysis remain, for the most part, what they were for Gunther in 1947 and, hence, the book is "outside" too much of contemporary America.

For example, Peirce seems to share the traditional liberal admiration for experts and large bureaucratic undertakings like Rockefeller's various building programs or Boston's downtown renewal. He knows that Rockefeller's "backdoor financing" was a bit shady; he calls attention to the "Prudential Law" by which Boston's then Mayor John Collins (now a prominent Democrat for Nixon) contrived to give a huge tax break to corporations that participated in renewal. Yet he slights or overlooks the connections between these facts and the serious problems that resulted: Boston's homeowners had to assume the burden of a fantastic tax rate which also helped produce a serious housing shortage; Rockefeller completed his highway program first and then took the state into mass transit, rather like building a smokestack and subsequently developing an interest in the control of air pollution. Peirce knows about these disturbing consequences. They do not, however, seem to change a view in which politics is "getting things done," and in which the political heroes are achievers in the old progressive style.

It is the same kind of perception that allows Peirce to state that Clark Kerr, former president of the University of California and always nonpareil in technocratic circles, "sought more independence for students and faculty" at Berkeley and "recognized the need for a greater student voice as having some currency." Now in fact, Kerr was a consistent opponent of a greater student voice; his "Kerr directives" to Berkeley's student government were denounced by the National Student Association a decade ago. If Kerr favored more independence, it was only in the sense of allowing a more affluent, individual, *private* liberty; participation played no role in his scheme of things and he was utterly indifferent to ideas of community.

A minor point? Possibly, except that it seems to reflect Peirce's own tendency to a kind of benevolent paternalism that can never quite grasp or take seriously the claims of the neglected. For example, his sense of the plight of working-class Americans is restricted to gross data like unemployment figures. He is fashionably anti-union. (His comment that "labor has done quite well" under Taft-Hartley—aside from being absurdly vague or simply absurd—has all the quality of a colonial officer celebrating imperial rule.) He can declare that New York City has a "sound economic base" while noting, a page later, that the city has lost thousands of lower- and middle-income jobs due to the departure of industry.

But economic problems are not the whole story. Peirce notes the obvious "lack of rapport, and often real hostility" between the Lindsay administration and "middle Americans." He treats it, however, almost as if it were only the mirror image of the Mayor's "humanitarian impulses" which have won him support—in Peirce's account—from "youth, intellectuals, blacks, Puerto Ricans, Jews and many women." (Jews? Has Peirce visited Brooklyn or Queens lately?) In part, it is. Yet it is also true that Lindsay and his staff—easily responsive to the upper-middle class, generously inclined toward the poor—show a clear reluctance to engage in political give and take. Opposition, or even a demand for a role in decisions, tends to be treated as the result of stupidity or evil intent. And so it must be where politics is regarded as a necessary nuisance intervening between good programs and their enactment.

In one sense, Peirce knows that political life is more than that. Certainly, he is free from the old fixation on "growth for growth's sake." (Though he refers to Pittsburgh as unfortunate in having lost population since 1960.) He is

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aware of the loneliness and isolation that help drive the New Yorker into "desperate self-defense," the rootless, terrified "freedom" of so many Southern Californians, the angry impotence of the neglected across America. But somehow, these are not really political "issues" demanding a political solution or a reborn political life. They remain part of the private world to which liberalism consigned them—politics consists of material problems with technical solutions. It is no surprise, then, that Peirce can describe machine politics as the result of the "naïveté of the unlettered Irish." That is what the patrician reformers thought at the time; it is, evidently, what a great many think now. Able to destroy the machines, they have been unable—possibly because they could not see the need—to create better forms of democratic political community. For all Peirce's intelligence, there is no promise in this book of anything much better, which is why it leaves me with a feeling halfway between anger and despair. And that is not a bad description of the mood of America. □

Unto Every One That Hath

EQUALITY. *By John Rees. Praeger Publishers. 152 pp. $5.*

LABOUR AND INEQUALITY. *Edited by P. Townsend and N. Bosanquet. The Fabian Society, London. 304 pp. £2.20.*

DANIEL SINGER

Mr. Singer is the author of Prelude to Revolution: France in May of 1968 *(Hill & Wang), and is at present working on a book on the subject of political equality. He has served as Paris correspondent of* The Economist *and the* New Statesman.

When the Levellers, the Diggers, Babeuf, the 19th-century Utopians or the early Socialists dreamt of a society of equals, they could not even imagine a society with the productive capacities of America today. And yet equality looms more distant than ever on the horizon. Indeed, until quite recently, the panegyrists of growth managed to dismiss it as rather irrelevant. The size of the cake, they argued, is more important than its distribution. But growth for whom, for which purpose and for whose benefit? With such questions springing up spontaneously throughout the Western world, the spokesmen for the Establishment are temporarily on the defensive and there is, once again, scope for the egalitarians.

The search for equality is, naturally enough, anathema to all rulers. Followed consistently, it not only strikes at the roots of property and wealth but attacks the prerogatives of power and the perpetuation of privilege. It questions the hierarchical order now concealed under a technological disguise. As such, egalitarianism is dreaded by all Establishments from Washington to Moscow. Hitherto they have managed to keep it in check, attacking it cleverly in the West as naive Utopianism and more openly in the East as a dangerous heresy. Yet both sides may soon have to face a new wave of levellers. At our stage of development the concept of equality contains political dynamite.

It cannot be said that Mr. Rees's little book provides this sort of ammunition for radical critics of existing society and it is a pity, because the author is well equipped for such a task. Clearly, he has studied Marxism, and possibly sympathized with it, at some stage in his academic career. Hence, the Marxist critique figures prominently in his brief chapter on inequality of wealth and the three following chapters dealing with political equality. Unfortunately, it is a version of Marxism bowdlerized for academic consumption. The letter is often there, but the spirit is not. Despite the many quotations from Marx and particularly Engels, the reader can hardly grasp that when they talked of a society in which men would be "free and equal," or when Marx claimed that all political and social inequalities would vanish with the abolition of classes, they had in mind quite a different society—in which differences between country and town, between intellectual and manual labor, have disappeared, and the state has withered away; in other words, the social division of labor has been abolished.

It may be objected that the contrast is striking between this vision and the reality of the first alleged attempt to put theory into practice, and no Socialist can simply dismiss this objection. It may equally be argued that there is no need to be a Marxist to write about equality. The snag is that Mr. Rees, having started with real issues, such as the influence of wealth and other factors on the perpetuation of privilege, ends inconclusively with verbal exercises and formal logic. Was it necessary to drag in Rousseau and Buonarroti, Marx and J. S. Mill, to conclude that "absolute equality" (i.e., uniform treatment for all) is not a practical possibility, while conditional equality is a subject "within the cognizance of the rational faculty"? At several stages in his book, the author refers to the Western societies in which we live as "liberal-democratic," on the ground that they do tolerate protest. In his case there was no need for much toleration. A book turning Marxist dynamite into a wet squib can be safely handed to students, with the blessing of the Establishment.

Indeed, after this disappointingly irrelevant ending one comes gratefully down to earth and the hard facts contained in the essays in *Labour and Inequality*. The sixteen essays are the more interesting since they are the product of that temple of gradualism, the Fabian Society, where it has always been preached that revolution is superfluous, because the same aim can be achieved by reforms, without a radical break. Hence, it is particularly significant that the authors collectively register here a striking failure of reformism. They have studied the performance of the Labour government, in office in Britain between 1964 and 1970, taking the struggle against inequality as a test, and found it disastrous. Rather than a record this is an indictment.

Written by specialists, the essays are

THE MAKING OF A RADICAL

A POLITICAL AUTOBIOGRAPHY

Scott Nearing

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of particular value for social scientists. Yet, the general reader can learn a great deal as well. First of all, he can learn not to take figures at their face value. Expenditure on welfare did go up during Labour's years in office, but the rise largely reflected an increase in the number of the aged and the unemployed—the latter hardly a feat of social progress. On closer scrutiny, it is seen that Labour has done very little to uproot inequalities in housing, health or education, and next to nothing in eliminating differences between rich and poor.

The distribution of wealth is, naturally enough, one of the least publicized secrets of our societies. The book quotes an estimate made by *The Economist* (on the basis of official figures of investment income), suggesting that in 1960 the richest 1 per cent of the British taxpayers owned 40 per cent of the nation's wealth and the richest 7 per cent owned 84 per cent of the total. (Indeed, "the richest tenth of one per cent was actually found to own 13 per cent of total wealth.") These fantastic proportions are still certainly roughly the same, since the Labour government never dared to strike at the source of wealth. It didn't even try to tackle the problem from the easier angle of income. "In no budget during this period," writes one of the authors, "was the aim of government policy a reduction in the degree of inequality in income distribution."

The book is a mine of information on the structure of British society. Though each country has its own features and peculiarities, the general trends cut across frontiers. That the poor are less healthy, have a shorter life expectancy or a lesser chance of higher education is not particularly British. The outsider will, therefore, find plenty of occasion for comparison. He will see, for instance, how the better off can benefit from apparently neutral legislation—how, say, the shift of resources from primary to university education really favors the middle and upper-middle classes. Above all, he will see that the system has its logic and that an allegedly "progressive" government is its prisoner.

Our Fabian doctors are better at diagnosis than in prescribing remedies. Having thoroughly described the ills, they turn back to the same old medicine, only to be better applied next time. And this is perfectly understandable. It took a great deal of courage and honesty for these supporters of Labour to show the bankruptcy of their movement. It was too much to ask them to give up the gospel of gradualism. Professor Townsend in the concluding essay does ask the crucial question whether the social democracy can lead to the peaceful transformation of society or simply to the "peripheral amelioration of the worst excesses of capitalism." But his query is rather rhetorical. And most of his fellow authors, while depicting the built-in biases of the system, tend to describe it—as Mr. Rees did in his book—as "liberal democratic." They cannot quite admit that they are bound merely to tinker with the surface as long as our societies are governed by the Biblical motto, "Unto every one that hath shall be given."

The failure of reformism to carry out fundamental changes is no surprise for a Socialist, even if the experience of the Wilson government is particularly eloquent. But the Marxist can no longer shrug this off with the consolation that revolution will inevitably alter this state of things. The Soviet precedent cannot be simply dismissed with arguments about Russia's backwardness or Stalin's crimes. The vagaries of egalitarianism in Russia, of *uravnilovka* as it was called there, and the revival of privileges, especially since the 1930s, require a closer analysis. It is a reminder that equality, like socialism itself, has to be conquered stage by stage and cannot be expected as a gift from heaven.

We find ourselves today in a paradoxical situation. At least in the advanced industrial countries, the conditions are ripe for men to be "free and equal." One does not need to be quixotic, or Gandhian, to think in terms of equal distribution within a generation or two. From Tokyo to San Francisco the world cries out for change. But while equality thus rapidly turns from Utopia to necessity, the political obstacles in its way swell rather than vanish. And many illusions are also pricked. Equality will not appear magically through growth nor automatically through revolution. It is the task of the new levellers to show egalitarianism as an indispensable, and explosive, ingredient of any genuine program for the radical transformation of modern society. □

'Congress Shall Make No Law . . .'

THE CONSTITUTIONALIST: Notes on the First Amendment. *By George Anastaplo. Southern Methodist University Press. 826 pp. $20.*

WILLIAM GANGI

Mr. Gangi received his doctorate from Notre Dame, and for the past two years served as assistant to the dean of the Graduate School of Arts and Sciences at St. John's University. At present he is a member of the executive board of the Politeia Society. He is a frequent contributor to law journals.

> I have tried to reconcile in this book the demands of both duty and liberty, of both the *Apology of Socrates* and the Declaration of Independence. . . . I realize, however, that an inevitable tension remains, a tension that comes in part from trying to adapt ancient teachings to our modern circumstances. . . . My concern has been—by throwing old light on new problems as well as new light on old problems—to get away from the doctrinaire quarrels that our constitutional issues are often reduced to. . . .

This is a rare book, one that contains original thinking, and a serious discussion of very sensitive topics. The author attempts to reconcile freedom and order, and to deal with the problem of permitting error while seeking to instill and maintain virtue in a people. This is, therefore, no book for the casual reader, even the casual scholar. While certainly not beyond criticism, it is a work of reason, concern and passionate conviction—even righteousness.

This review can scarcely convey the breadth of Anastaplo's research—he must have a remarkable cataloguing system. The book consists of 285 pages of text, approximately 400 pages of exhaustive, often tedious, footnotes, and some 125 pages of appendices. The last include excerpts from the record of his own remarkable experience with the First Amendment, that is, the Supreme Court's upholding the denial of admission of Anastaplo to the Illinois bar on grounds of "unfit" character. He had refused, *on principle*, to answer questions relating to whether he was affiliated with any "subversive" organizations, as well as argued that the Declaration of Independence contained the proposition that citizens ultimately had the right of violent revolution.

I must admit that I approached the book in a pessimistic spirit. I was convinced that Sidney Hook put Justice Black's "absolutes" to rest, despite the latter's ringing rhetoric. Anastaplo, however, has prompted the need for additional reflection. He has, as a scholar should, raised the level of the arguments and in the process introduced refreshing complexity. Here is a brief summary of

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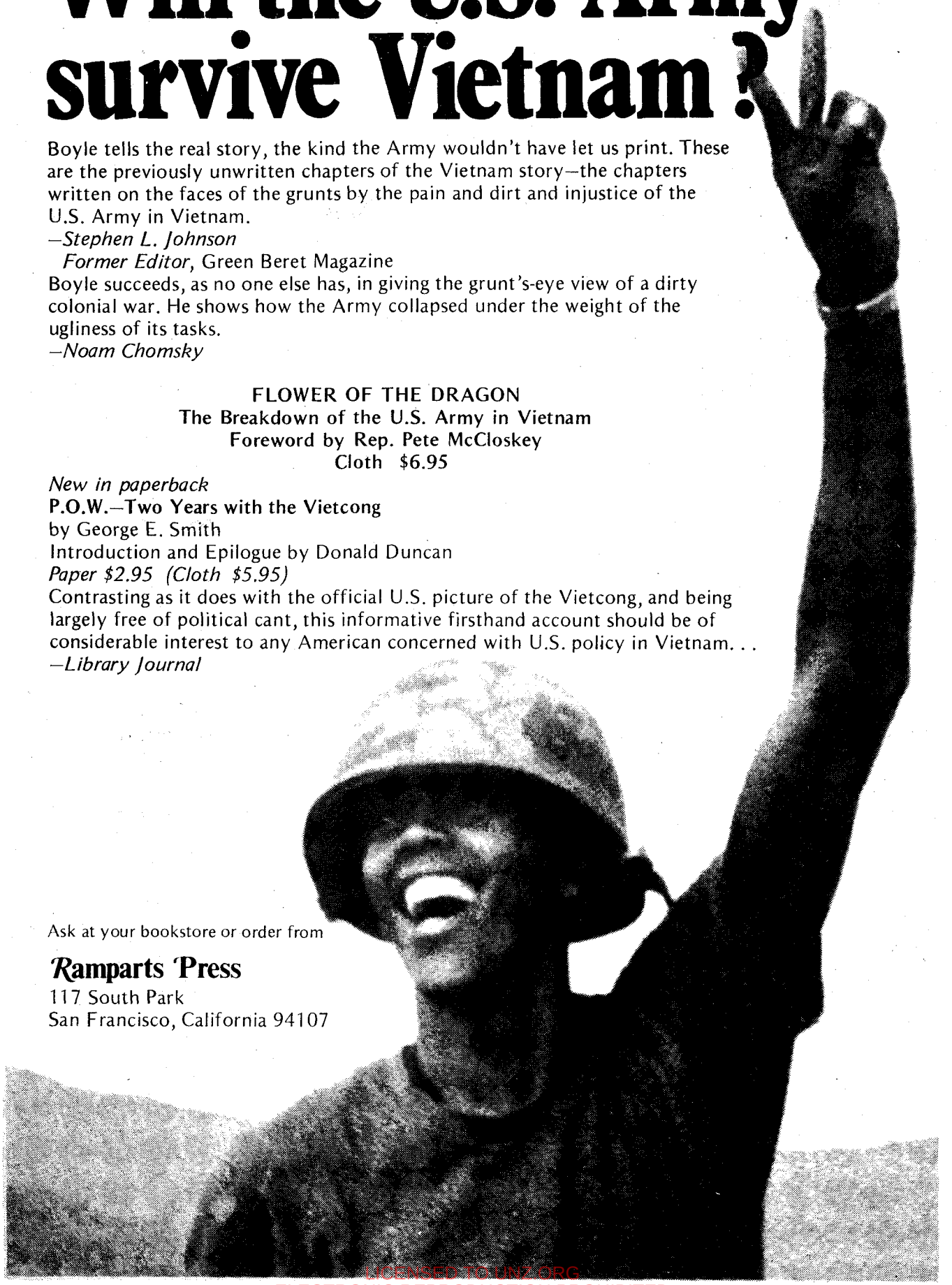

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his position: Anastaplo argues that the framers of the First Amendment, as well as the people, intended to prohibit Congress in its legislative capacity from dealing with matters of speech and press. ". . . If treason, that terrible crime for which many Englishmen had been executed, could be safely limited [as it is in our Constitution], what risk was there in denying the general government any power to deal with seditious libel?" In short, he argues that the First Amendment extended to the general population the privileges of free speech accorded legislators on the floor of Congress. He takes issue with Leonard Levy's position (expressed, notably, in his *Legacy of Suppression*) that the First Amendment prohibited only prior restraint of the press and kept intact the common law practice with regard to seditious libel. Anastaplo argues that the speech protected was that "having to do with duties and concerns of self-governing citizens." He, as did Black, challenges the Holmes doctrine of "clear and present danger." If speech is indeed speech, no matter how inflammatory, and not espionage, or integrally tied to immediate, specific and illegal action, Congress is prohibited by the First Amendment from violating the guarantees contained therein.

Thus far, no particular surprises for either liberal supporters or conservative opponents. But surprises are in store for both: "One virtue of my position [is] that it makes reasonable allowance for the demands of both liberty and order." Keeping that purpose constantly in view, Anastaplo proceeds to wipe the smile off liberal faces and attract the attention of thus far scowling conservatives. First, he contends that only political speech was protected, not all speech. He relegates nonpolitical speech and libel, "symbolic speech," and questions of obscenity into a relatively unprotected area—unprotected at least as now understood by the Supreme Court. Second, if one insists on being literal, consistently literal, one notes that the First Amendment prohibits *only* Congress in its legislative capacity, and not—should circumstances demand it—executive, judicial and even private suppression. Third, and most important, Anastaplo takes the position that the First Amendment certainly was not directed at the states. The states were to remain free to limit, perhaps severely, freedom of speech and press, subject only to the discretion of the state courts and to Congressional supervision: that is, while the First Amendment prohibited the Congress from abridging freedom of speech and press, the Constitution says nothing about prohibiting Congress from *expanding* freedom of speech and press by taking seriously the federal guarantee of "republican" forms of government in the states.

"Indeed, it is because the states were left free to deal with the inevitable abuses of free speech and a free press that an unlimited prohibition upon Congress came to be accepted as workable." In short, Anastaplo considers extension of the First Amendment prohibitions to the states through the Fourteenth Amendment regrettable because it inevitably jeopardized the original potency of the absolute prohibition against Congressional interference. In fact, the inevitable outgrowth of the *Gitlow* line of cases has been to make the "clear and present" danger balancing test acceptable to the population. Individual states can no longer provide havens of freedom. Demands to "do something" about supposed abuses cannot be confined locally but take on a national character, encouraging conspiracy as a way around the First Amendment prohibitions. Protesters must go to Canada, not New York, Wisconsin or Oregon, to carry on their war of words.

While it may be argued that the author does not give it adequate weight, he certainly does not ignore contrary evidence. He provides the reader with rich and immensely varied source material, and he recognizes that his historical interpretation is "poetic" and subject to criticism. He makes, however, powerful and well-reasoned arguments in defense of his position, arguments drawing heavily from classical as well as modern political theorists, philosophers and literary figures. Nor is he unaware of the telling literature, notably the writings of Willmoore Kendall, that challenges many of his philosophical premises; my own most serious reservation about this book is Anastaplo's seeming reluctance to meet Kendall's arguments on their merits—but perhaps that will be the subject of a subsequent work. If I were in a position to make a suggestion, I would urge the author to condense his main arguments into 90 or so pages, add an equal number devoted to Kendall's position, and make the resulting book available in paperback. Such a work would reach a larger audience and do much to stimulate discussion in our universities and law schools.

It would be a misfortune if this book were ignored, for it is designed to evoke cries of anguish from liberals and conservative scholars alike, and it provides the grounds for a new discussion of the contemporary constitutional crisis of order and liberty, rights and duties—a discussion thus far missing because of a general failure to appreciate the necessary tension between these ideals that Anastaplo is at pains to demonstrate. □

Crimes of the Left: Capt. Medina

MEDINA. *By Mary McCarthy. Harcourt Brace Jovanovich. 87 pp. Paper $2.45.*

STEPHEN KOCH
Mr. Koch is a novelist and critic, the author of Night Watch *and a forthcoming book on Andy Warhol.*

Mary McCarthy has written a little book on the trial of Ernest Medina, an account of the slippery court-martial that launched a man who is almost certainly a mass murderer into his current career as an executive in F. Lee Bailey's helicopter plant. Miss McCarthy doesn't miss a trick, of which there were many: testimony damaging to Medina disallowed, crucial witnesses discredited and betrayed, affidavits from Vietnamese translators disregarded. The novelist's cold eye surveys the scene and in the language that made her famous, she freezes the protagonists in their failures and venalities and evasions. But, the book is not one thing it probably should be—true investigative journalism. The political forces bearing on that languid Southern courtroom are left shadowy or invisible as Miss McCarthy reports only what she sees or can very carefully infer. She sees well enough. But surely the down-home horror she witnessed there calls for something more than she gives us.

Such as an exposé of the whole so-called process of justice involved in the My Lai trials. Beyond that task, which Seymour Hersh and others have performed, surely the only reason to write about the legal adventures of Charlie Company is to make use of the disgrace upon disgrace they represent, to enter the racking crisis in the meaning of order, justice and responsibility in what the author calls "this miserable country" —to confront the ethical and jurisprudential crisis before us, now that our leaders have managed to transform this country as a polity into an unregenerate international criminal.

Miss McCarthy deals with that crisis very lightly indeed, using a kind of intellectual BB gun to pick off some ballooning *idées reçues* about the trials, floated by what she variously calls the "far left," the "young rebels," and the "counter-culture." Spiraling tirades con-

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demning the entire culture, or insisting Nixon and Johnson take Medina's place in the dock, are easy marks and promptly fall to the ground. Miss McCarthy is an old hand at the "we-are-all-guilty" routine, and she swiftly pegs its apocalypticism as evasion, dissolving individual responsibility for change. It's equally easy to show that the collateral guilt of the high politicians scarcely exculpates the men who did the actual killing. Yet one agrees with such conscientious truisms uneasily, for they raise ethical dilemmas more painful than the ones they dispel. When a polity has become criminal, to insist upon the individual guilt of the mass murderers, to go further, as Miss McCarthy does, and invoke a larger political ethics to vivify their guilt, does not resolve but exacerbates the crisis in the order of individual responsibility. But Miss McCarthy shies away from the dreadful phrase, "criminal polity." Understandably. Yet the dogs she has so discreetly released run to it inevitably.

These are the regions of ethical despair. Jefferson trembled for his country when he reflected that God is just. Goering trembled because the jig was up, he was defeated and a prisoner. Fortunately or unfortunately, America has no other scourge for its sins but intellectual reflection, which Miss McCarthy initiates but then refuses to pursue. Writing of Calley's responsibility, she concedes that he is indeed a "pawn moved about from birth by the system," and adds:

> It does not follow that having failed to "make it," he was unable to tell good from evil. As if that faculty were assigned on the basis of worldly achievement or a listing in *Who's Who.*

Exactly so. Aware that the Uniform Code of Military Justice is not ideally adequate to Vietnam's horrors, Miss McCarthy rightly relies very heavily on this kind of simple, common-sense categorical imperative. Yet what she seems to feel but does not (in this book) forthrightly say, is that the moral truth that instantly condemns an infantry grunt bayoneting a pregnant woman also condemns the whole American "presence" in Vietnam, and condemns everyone involved. This war has been evil from its inception: it has been self-evidently evil to all but its perpetrators and the blind for seven years at least—and just as self-evidently evil as Rusty Calley firing into that crowd of pleading women. It has involved every man and woman in this country in a crime for which there can be no forgiveness and for which there is no appropriate atonement. Of course Calley and his confederates are guilty. But to insist upon their individual guilt hardly disposes of the question of collective responsibility. We do not need Mary McCarthy to point out that the guilt of a polity must be considered in different terms than that of an individual; that an ordinary taxpayer forced to feed the war machine bears a radically different order of responsibility from that of Johnson and Nixon; that Calley's crime is ethically different from the crime of a pilot on a "routine" (i.e., officially approved) bombing raid; that pilot and mass murderer are responsible for the carnage and terror they create in a different way from the Westmorelands and Kosters who kill only by telephone and with their signatures. Every-

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one knows such matters are far from simple. But does Miss McCarthy imagine that disposing of a few platitudes brings the issue nearer to clarity?

There is of course a value in reasserting the most obvious ethical truths. But it is not enough. Writing about a young Southern helicopter pilot whose testimony was the most damaging the court allowed, Miss McCarthy says:

> To a very ordinary intelligence (Thompson's) the sight of the bodies urgently raised questions that to an ordinary intelligence would seem to want serious answers. Thompson's density, his puzzled inability to "understand" were a sort of saving slow-wittedness. The picture of him hovering in his helicopter trying to comprehend gave a simple measure by which to judge the others, who from General Koster on down acted like the three wise monkeys: see no evil, hear no evil, speak no evil.

One as quick-witted as Miss McCarthy should see that to "measure" Thompson's simplicity is essential but politically inadequate. She obviously rejects the response—a revolutionary response—proposed by the "far left." Very well. Are we left with nothing but the hope that at last, year after year after bloody murderous year, the horror will somehow terminate? With perhaps "foreign aid" to our former victims as we shed a tear over the millions dead and hope it doesn't "happen" again? Mere prosecution of those even the *Army* calls criminals? It's probably too much to hope that a McGovern administration would do more than end the war, grant amnesty to draft resisters, and perhaps provide (under another name) some miserably inadequate reparations. Given the cynicism, brutalization and decay of conscience McCarthy saw everywhere around the Medina trial as a result of the war, it is doubtless naive to hope even for minimal, Adenauer-like measures, like legislation barring from public office for life the thousand or so politicians and military men most responsible. A pipe dream, of course. Political fantasy. No way.

Nowhere in *Medina* does Miss McCarthy hint that she has even a clear opinion about the terrible ethical and political dilemmas her own arguments raise. Perhaps full clarity would threaten the faintly left-of-Center position she occupies. Instead, she dodges the problem of political responsibility by shaking her finger at some confused polemicists to her left, especially since it was *they*, whatever their ideological limitations, who were "right from the start." Worse, the tactic leads her into an inexcusable lapse. Speaking of the flush of national pride over the fact that the My Lai trials could be held at all, she writes:

> Yet the boast was a source of anger to the local "counter-culture," which grudges this miserable country any point of pride. The plum was snatched away before it could be feasted on. Doubtless, if Calley had been acquitted, there would have been the same storm (cries of "hypocrisy," "fake justice") from the left that followed his conviction, though the right would have been appeased. The result is now visible. Medina and Henderson off the hook, Calley's sentence reduced, others not tried, several identified and unidentified mass murderers welcomed back to the population. Now any member of the armed forces in Indochina can, if he so desires, slaughter a reasonable number of babies, confident the public will acquit him, (a) because they support the war, (b) because they don't.

To suggest that Charlie Company's evasion of justice is the "result" of the "counter-culture" "grudging this country any point of pride" is an outrage. How these men got "off the hook" is public knowledge. The "public" does not convict or acquit mass murderers. Courts-martial do. The counterculture did not reduce Calley's sentence. Nixon did. Medina's trial was ineffective and others never held at all, not because of public discussion but because of the machinations of the Judge Advocate General's office, as Miss McCarthy herself demonstrates. As she is certainly aware, effective public pressure came almost entirely from the Right, led by Wallace. The responsibility is *theirs*; any other view is a shocking betrayal of the very ethical ideas *Medina* seeks to uphold. I leave to the reader the incredible innuendo linking possible future massacres to those who most rigorously protested My Lai. To read a passage such as this in a book written by one who is at least *trying* to face the moral depth of our national disgrace is an appalling measure of how black and deep that disgrace has become, and how very long it may be before we can hope to glimpse, even in dreams, the bright light of justice. □

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Crossword Puzzle No. 1455

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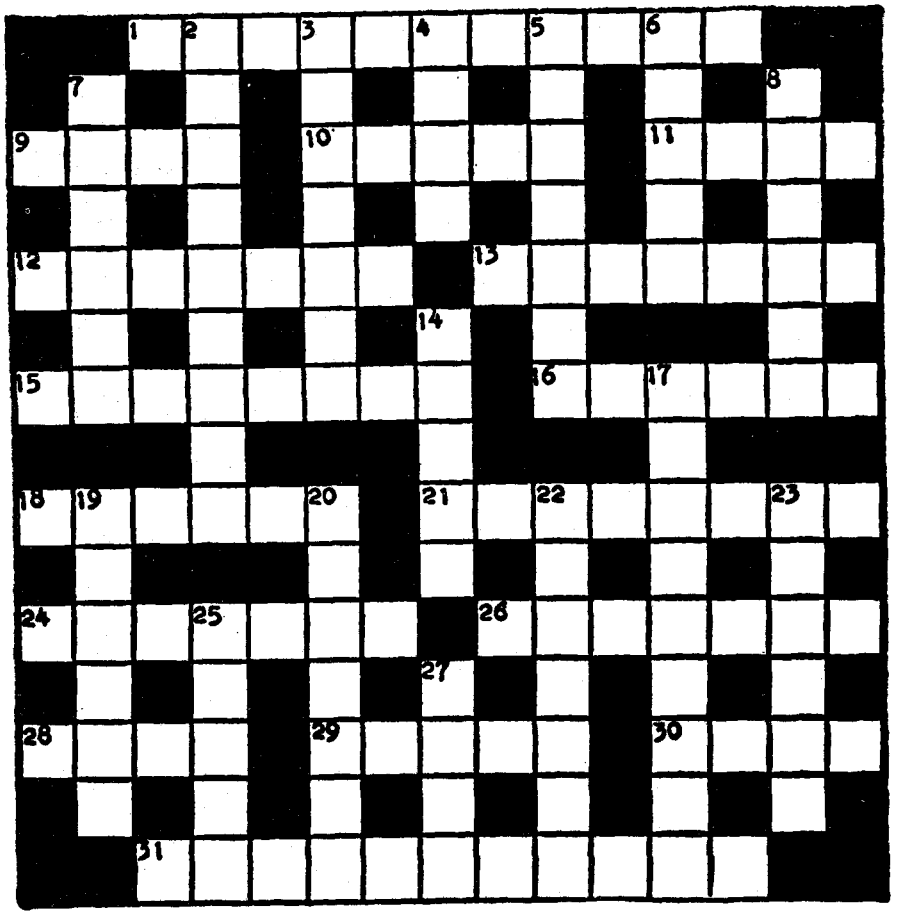

ACROSS

1 One might rise to the heights of religion. (11)
9 and 10 Spiritual, but one might keep you from getting something if the point is missed. (4,5)
11 See 28 across.
12 Come in with little less than a hundred British typhoid. (7)
13 An animal in the barn is attacked with severe criticism. (7)
15 Bead molding might be like the classic stars to a rather common girl. (8)
16 Smash a clout about a hundred? That's strange! (6)
18 One short month, and in France you'll get a number of things like the Pleiades. (6)
21 Pillage a whole people? It's good clean fun for the kids. (4,4)
24 Seen to be rather measly. (7)
26 A large bundle not quite stuffed with malign influences. (7)
28 and 11 across And a smaller bundle, old but well wrapped up. (8)
29 Quiet carpeting—something that expresses a lack of concern. (5)
30 Infamous WW-II name, now part of the Devil's elite. (4)
31 Adding machine symbol, or just given to acknowledge a friend. (11)

DOWN

2 Place in uprising, with an outbreak of Crete? No wonder they try to keep such things under wraps! (3,6)
3 It might depend on the listener! (7)
4 Reputedly is amused by those who make locks. (4)
5 Where the blasted defense really was? (7)
6 Slide next to the water? (5)
7 It might involve the sports racket. (6)
8 You might, if unhappy with the measure, ring again! (6)
14 The specious appearance of a marginal note. (5)
17 A low-slung car might be good at it. (9)
19 Keeping watch brings up a slight error about one. (6)
20 Not necessarily the crime of a wayward Senator. (7)
22 and 23 Crusoe does, and evidently decides on a different dish. (7,6)
25 Why, by the sound of it, you get sort of took, also, when you accumulate foreign capital. (5)
27 Good old composer? Bad near here! (4)

SOLUTION TO PUZZLE NO. 1454

ACROSS: 1 Tam O'Shanter; 9 Good will; 10 Loaves; 11 Demotic; 12 Statute; 14 Stalls; 15 Incasing; 17 Bursitis; 20 Pamper; 24 Palaces; 26 Depict; 27 Predicts. DOWN: 2 Androcles; 3 Origins; 4 and 22 Half-hearted; 5 Nilotic; 6 Enact; 7 Robert; 8 Sexton; 13 and 28 First-degree burns; 16 Summation; 18 Uneven; 19 Theater; 20 Plateau; 21 Events; 23 Raise; 25 Epee.

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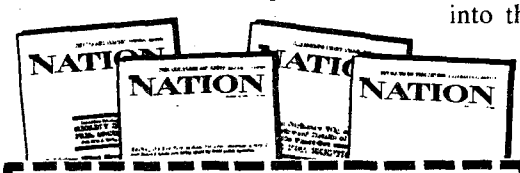

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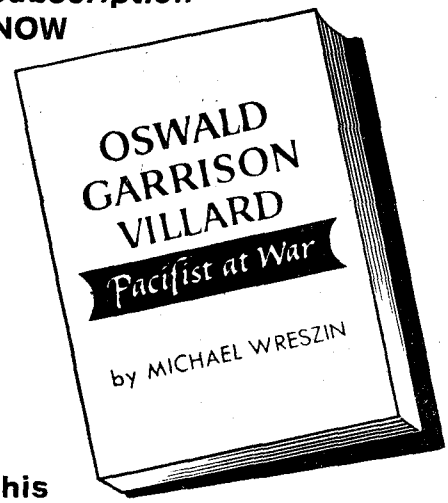

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